

Exhibit X

Redacted

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- - - - -
Michelle Simha, as
Trustee for the
Next-of-Kin of Noah
Leopold,

Plaintiff, Civil File No.
24-CV-01097-JRT-DTS

vs.

Mayo Clinic,

Defendant.

- - - - -
DEPOSITION OF SALAH ALTARABSHEH

Volume I, Pages 1 - 213

August 12, 2024

(The following is the deposition of Salah Altarabsheh, taken pursuant to Notice of Taking Deposition, via video, at Mayo Clinic, Legal Department, 100 2nd Street SW, Rochester, Minnesota, commencing at approximately 9:00 a.m., August 12, 2024.)

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 On Behalf of the Plaintiff: 3 Brandon Thompson Bibeana Metsch-Garcia (via Zoom) 4 CIRESI CONLIN LLP 225 South Sixth Street 5 Suite 4600 Minneapolis, Minnesota 55402</p> <p>6 On Behalf of the Defendant: 7 Andrew Brantingham 8 DORSEY & WHITNEY LLP 50 South Sixth Street 9 Suite 1500 Minneapolis, Minnesota 55402</p> <p>10 ALSO PRESENT: 11 Ron Huber, Videographer 12 Anna C. Messerly, Ciresi Conlin Maggie Palmisano, Ciresi Conlin (via Zoom) 13 Sheri Peterson, Mayo Clinic Michelle Simha (via Zoom) 14 Karen Leopold (via Zoom) Norman Leopold (via Zoom) 15 Jenna Shulman (via Zoom)</p> <p>16 EXAMINATION INDEX 17 WITNESS EXAMINED BY PAGE 18 Salah Altarabsheh Mr. Thompson 4 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Shulman. 2 THE REPORTER: Okay. 3 MR. THOMPSON: All right. 4 (Witness sworn.) 5 SALAH ALTARABSHEH, 6 called as a witness, being first duly 7 sworn, was examined and testified as 8 follows: 9 EXAMINATION 10 BY MR. THOMPSON: 11 Q. Good morning, doctor. A. Good morning. Q. Have you ever had your deposition taken before? A. Never in my life. Q. All right. So a couple of ground rules that I want to go over with you to make sure that we get a nice, clean record. Okay? A. Sure. Q. All right. So the first thing is we've got a court reporter here that's taking down everything that's being said. Because of that, it's really important that you wait for me to finish asking my question before you give your answer so you're not talking over one another.</p>
<p style="text-align: right;">Page 3</p> <p>1 P R O C E E D I N G S 2 THE VIDEOGRAPHER: Good morning. We 3 are on the record. Today is August 12th, 2024. 4 The time is 9:00 o'clock a.m. Today's case 5 caption is Simha versus Mayo Clinic. The 6 witness for today's deposition is Salah 7 Altarabsheh. 8 At this time the attorneys for the 9 various parties will introduce themselves and 10 the court reporter will swear the witness. 11 MR. THOMPSON: Brandon Thompson along 12 with Anna Messerly for the Simha family. 13 MR. BRANTINGHAM: Andrew Brantingham on 14 behalf of defendant and the witness. 15 And now that we're on the record, can 16 we get a rollcall of who is observing on Zoom 17 just for the record? 18 MR. THOMPSON: Yeah. So you guys go 19 ahead and unmute. Oh. So it's -- 20 I'll just -- I'll just do it. Karen 21 Leopold, Norman Leopold, Michelle Simha, and 22 then Maggie Palmisano and Bibi Metsch-Garcia 23 from my office are on. And I think Jenna -- 24 THE REPORTER: I just admitted Jenna. 25 MR. THOMPSON: And Jenna Leopold</p>	<p style="text-align: right;">Page 5</p> <p>1 Can we do that? 2 A. Sure. 3 Q. We want to avoid uh-huhs and huh-uhs. 4 Yeses and nos are better than that. Same with 5 shakes and nods. The video will capture that, 6 but the court reporter can't, so make sure you 7 give a verbal response. Okay? 8 A. Sure. 9 Q. If any of my questions are in any way 10 unclear, will you promise to let me know so I 11 can rephrase them and make sure you and I are on 12 the same page before you give an answer? 13 A. Sure. 14 Q. Okay. Why don't you tell me what 15 you've done to prepare to have your deposition 16 taken. 17 A. I -- I reviewed all the documents. 18 Q. What documents? 19 A. That -- 20 For that donor and for that recipient 21 and -- because it's one year, sir, one year ago. 22 Q. Sure. There are tens of thousand of 23 pages of documents that we've exchanged back and 24 forth here, and I'm guessing you didn't review 25 tens of thousands of pages of documents.</p>

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<p>1 A. Correct.</p> <p>2 Q. Okay. So let's just kind of go through 3 and you give me a rundown of what documents you 4 reviewed to prepare for your deposition.</p> <p>5 A. Yes. So just -- just to know what I 6 can recall from that trip for this heart 7 procurement, because that donor -- I had -- I 8 looked at his documents from the UNOS database 9 and I found everything that I need, and I looked 10 through all his numbers on the OCS machine, 11 which is the Organ Care System, and I reviewed 12 all the aspects of that, and that's it.</p> <p>13 Q. That's in preparation for your 14 deposition.</p> <p>15 A. Yes.</p> <p>16 Q. So let me see if I'll -- 17 I'll kind of repeat it back to you and 18 summarize it to make sure that we're on the same 19 page.</p> <p>20 A. Uh-huh.</p> <p>21 Q. In preparing for your deposition, you 22 reviewed all of the documents from UNOS about 23 the donor.</p> <p>24 A. Uh-huh.</p> <p>25 Q. Right?</p>	<p>1 two, three, four-page operative note?</p> <p>2 A. Correct.</p> <p>3 Q. Other than the four-page operative 4 note, did you look at any other part of the 5 25,000 pages of Noah Leopold's Mayo medical 6 record in preparing for your deposition?</p> <p>7 A. That's all.</p> <p>8 Q. All right. Other than the UNOS 9 documents, the OCS information, and the 10 operative report, --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- did you look at any other documents 13 as part of preparing to have your deposition 14 taken?</p> <p>15 A. As a preparation also, I met with -- with -- with my legal team as well.</p> <p>16 Q. Yep.</p> <p>17 A. Yes.</p> <p>18 Q. And obviously we're not going to talk 19 about anything --</p> <p>20 A. Sure.</p> <p>21 Q. -- you talked about.</p> <p>22 A. Yeah. Sure.</p> <p>23 Q. But in terms of any other documents, 24 you didn't look at anything else.</p>
<p>1 A. Correct.</p> <p>2 Q. You reviewed, you said, the OCS 3 numbers. Are you talking about the lactates and 4 the perfusion parameters?</p> <p>5 A. Correct.</p> <p>6 Q. There was an Excel spreadsheet that had 7 perfusion parameters on it. Did you look at the 8 Excel spreadsheet?</p> <p>9 A. Correct, I looked.</p> <p>10 Q. And then there were some printouts of 11 the lactate and the ABG values. Did you look at 12 those printouts?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Did you look at any other documents as 15 part of preparing for your deposition?</p> <p>16 A. I looked into the recipient also.</p> <p>17 Q. What documents did you look at --</p> <p>18 A. I looked to the --</p> <p>19 Q. Hold on. Just one sec. Sorry. We 20 can't talk over one another, so just let me 21 finish my question.</p> <p>22 What documents did you look at with 23 respect to Mr. Leopold?</p> <p>24 A. Yeah. The operative notes.</p> <p>25 Q. And that's Dr. Villavicencio's one,</p>	<p>1 A. No.</p> <p>2 Q. What is your current employment status 3 with Mayo?</p> <p>4 A. I'm an associate cardiovascular surgeon.</p> <p>5 Q. Do you practice anywhere other than at 6 Mayo currently?</p> <p>7 A. No. I'm holding also an academic rank as an assistant professor in surgery.</p> <p>8 Q. At Mayo?</p> <p>9 A. At Mayo --</p> <p>10 Q. Got it.</p> <p>11 A. -- School of Medicine.</p> <p>12 Q. Okay. Is -- 13 So your employment at Mayo is full 14 time.</p> <p>15 A. Full time.</p> <p>16 Q. Do you currently live in Rochester?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. For how long have you worked 19 full time exclusively at Mayo?</p> <p>20 A. Since January 4th, 2022.</p> <p>21 Q. Do you do transplants?</p> <p>22 A. I do procure hearts and lungs and help in the transplant surgery.</p>

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<p style="text-align: center;">Page 10</p> <p>1 Q. When you say you help in the transplant 2 surgery, tell me what that means. A. Assist in the surgery. 3 Q. Have you ever been the primary surgeon 4 on a heart transplant? A. No. 5 Q. Do you do other sorts of cardiac 6 surgery other than act as the first assistant on 7 transplants? A. Can you repeat this question, please? 8 Q. Yeah. As part of your practice here at 9 Mayo, -- A. Yes. 10 Q. -- do you do other types of cardiac 11 surgery other than assisting on transplants? A. I sometimes assist in regular cardiac 12 surgery, I mean the cardiac surgery kind of 13 procedures. 14 Q. Do you ever act as the primary surgeon 15 for any cardiac procedures at Mayo? A. At Mayo? 16 Q. Yes. A. No. 17 Q. Do you assist on lung transplants, or 18 just heart transplants?</p>	<p style="text-align: center;">Page 12</p> <p>1 something else. Okay? 2 A. Uh-huh. 3 Q. Are you with me? A. Yes. 4 Q. How much of your professional time is 5 spent on the procurement bucket? A. Ninety-five percent. 6 Q. There are other procurement surgeons 7 that work for Mayo; is that right? A. Correct. 8 Q. And let's stick just with heart and 9 lung now, not liver and kidney and things like 10 that. How many other procurement surgeons are 11 there in the Cardiovascular Department at Mayo? A. It's -- Officially we're having other two than 12 me. 13 Q. Doctor -- 14 Is it Knop or Knop? A. Knop. 15 Q. Dr. Knop would be one of them. A. Yes. 16 Q. Who is the other one? A. Dr. Fuad Al-Azzam 17 Q. My understanding is that at some</p>
<p style="text-align: center;">Page 11</p> <p>1 A. Lung and heart transplants, both. 2 Q. In your practice before you came to 3 Mayo, were you ever the primary surgeon for a 4 heart transplant? A. No. 5 Q. I gather from looking at your CV that 6 you were the primary surgeon on other types of 7 cardiac surgery before you came to Mayo. A. Correct. 8 Q. Why aren't you doing -- 9 Why aren't you acting as the primary 10 surgeon on cases at Mayo now? A. Because my job description here is an 11 associate cardiac surgeon, and the associate 12 cardiac surgeon is doing the procurement for the 13 hearts and lungs. 14 Q. What percentage of your practice is 15 spent procuring hearts and lungs for transplant? A. Most of my -- my job duties are on 16 procurements. 17 Q. Okay. So I'm going to divide your 18 practice into two buckets; one would be going to 19 procure organs for somebody else to transplant 20 them, the other bucket would be assisting on 21 cardiac surgery, whether it's transplant or</p>	<p style="text-align: center;">Page 13</p> <p>1 institutions that do transplants, the 2 institution will send fellows to do the 3 procurement. Does Mayo do that? A. Mayo send the associate surgeons to do 4 the transplant -- 5 Q. To procure the organ. A. -- to pro -- I'm sorry -- to procure 6 the organs, sorry, but sometimes they are 7 sending the fellows to help the -- the associate 8 surgeon. 9 Q. Fair enough. 10 So if I'm understanding you correctly, 11 for any heart/lung transplant that is performed 12 here at Mayo Rochester, either you, Dr. Knop, or 13 the other doctor who I didn't write down will be 14 going to procure the organ. A. That's correct. 15 Q. And maybe it will be more than one of 16 the three of you, and maybe there will be a 17 fellow, but it's always going to be one of the 18 three of you. A. That's correct. 19 Q. How many procurement runs do you think 20 you've gone on this year? A. I did, in total, 180.</p>

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<p>1 (Interruption by reporter.)</p> <p>2 Q. Is that --</p> <p>3 A. In total since I came here.</p> <p>4 Sorry to interrupt you.</p> <p>5 Q. No. Perfect. That's great.</p> <p>6 A. But this year I did 53 procurements,</p> <p>7 and that included lungs and hearts.</p> <p>8 Q. Can you give me a sense of what the breakdown is between hearts and lungs?</p> <p>9 A. It's a rough estimate, half and half.</p> <p>10 Q. Sometimes you're going to take the heart and the lung.</p> <p>11 A. And sometimes we take heart-lung block.</p> <p>12 Q. Right. Of those 53, do you have any sense of how many would have been a heart-lung block?</p> <p>13 A. Can I give you a rough estimate, or do you need the accurate number?</p> <p>14 Q. No. Your best estimate would be fine.</p> <p>15 A. Best estimate. Okay.</p> <p>16 Best estimate, two to three a year heart-lung.</p> <p>17 Q. And then roughly half and half hearts and lungs out of the other 50.</p> <p>18 A. That's correct.</p>	<p>1 rough numbers?</p> <p>2 Q. The best number you can give me is what I'm looking for.</p> <p>3 A. Yes. I can give you --</p> <p>4 MR. BRANTINGHAM: Are you asking in total or per year?</p> <p>5 MR. THOMPSON: Yeah. Good --</p> <p>6 Q. Well is there a difference between overall total or per year? Has -- has there been more use of the OCS recently than there was, say, in 2022?</p> <p>7 A. Of course 2022 we get -- started the OCS, I can recall, after, you know, April or May something. But we did late -- in the late 2022 more OCS, and 2023 we did more and, of course, 2024. So that's -- that's the -- the numbers for those, yes.</p> <p>8 Q. Okay. So let's -- let's just try to --</p> <p>9 try to go back and do our best estimate. So now here's what I want to do.</p> <p>10 A. Uh-huh.</p> <p>11 Q. I want to stick just with hearts.</p> <p>12 A. Okay.</p> <p>13 Q. So in 2022, give me your best estimate of how many hearts you procured.</p>
<p>1 Q. Was that the case roughly in 2023 and 2022?</p> <p>2 MR. BRANTINGHAM: Object to the form.</p> <p>3 Was what -- what the case?</p> <p>4 Q. Roughly half between hearts and lungs?</p> <p>5 A. You mean how many hearts, how many lungs?</p> <p>6 Q. Yeah. So in 2024 --</p> <p>7 A. Okay.</p> <p>8 Q. -- you told me that so far in 2024 about half of your procurements have been hearts, and about half of them have been lungs, and maybe a couple of heart-lung blocks interspersed in there. Right?</p> <p>9 A. Correct.</p> <p>10 Q. In 2023, was it also roughly 50 percent heart, 50 percent lung?</p> <p>11 A. I mean I cannot say it's 50 absolutely. It's roughly.</p> <p>12 Q. Yeah.</p> <p>13 A. Yes, that applies to 2023 and that applies to 2022.</p> <p>14 Q. Do you have a sense of how many of those procurements used the OCS?</p> <p>15 A. Again, do you need accurate numbers or</p>	<p>1 A. I can't recall that -- I mean the right estimate, but I can tell you it's around ten cases in 2022, you know, eight to ten, something like that.</p> <p>2 Q. How about in 2023? Just hearts.</p> <p>3 A. Let's say 12 to 15.</p> <p>4 Q. And so far in 2024? How many hearts so far just in 2024?</p> <p>5 A. An estimate?</p> <p>6 Q. Yes.</p> <p>7 A. A rough estimate?</p> <p>8 Q. Yep. Absolutely.</p> <p>9 A. Yes. Let's -- Eight cases.</p> <p>10 Q. All right. Now let's go back to 2022.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Of the --</p> <p>13 I know these are estimates. We're not holding you to a specific number. I know these are --</p> <p>14 A. Okay. That's all right. That's all right.</p> <p>15 Q. Of -- of your best estimate, ten hearts that you procured in 2022, how many of them were on the OCS?</p>

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<p style="text-align: center;">Page 18</p> <p>1 A. That's what I'm telling you, about the 2 OCS. 3 Q. So it's ten OCS hearts in 2022. 4 A. Yeah. Eight to ten I tell -- I told 5 you. 6 Q. Perfect. 7 A. Yeah. Yeah. 8 Q. I was going to -- 9 The numbers seemed a little bit off to 10 me, so I was going to go back to it. 11 A. Exactly. Yes. 12 Q. So about ten OCS hearts in 2022, maybe 13 12 to 15 OCS hearts in 2023, maybe eight OCS 14 hearts in 2024. 15 A. These are rough estimates. 16 Q. Got it. 17 A. The current -- 18 The plus/minus, small digits. 19 Q. Understood. 20 A. Yes. 21 Q. Yep. I understand. 22 A. But -- 23 Q. What I -- 24 Go ahead. Sorry. 25 A. I'm sorry. I want to make sure these</p>	<p style="text-align: center;">Page 20</p> <p>1 A. Yes, I did. 2 Q. Where is it? 3 A. I have it. I can forward to anyone if 4 you -- if you need that. 5 Q. Great. 6 A. Sure. I can provide you today. 7 Q. No, that's -- I -- 8 MR. BRANTINGHAM: We can follow up on 9 it after. 10 MR. THOMPSON: Yep. We'll follow up on 11 it. 12 Q. You have it and that's great. 13 When did you do your OCS training? 14 A. It was in July 2022. 15 Q. Did you go to Boston to do that? 16 A. Yes. 17 Q. How long is the training? 18 A. It was two days. 19 Q. As part of that training, did they 20 train you on all aspects of the OCS? 21 A. Yes. 22 MR. BRANTINGHAM: Object to the form of 23 the question. 24 Q. One of the things that's done while the 25 heart is on OCS is the use of the blood gas</p>
<p style="text-align: center;">Page 19</p> <p>1 are OCS, not hearts, because the number of heart 2 procurements are much more. 3 Q. Absolutely. 4 A. Yes. 5 Q. Absolutely. Not every heart you 6 procure is on the OCS. 7 A. That's correct. 8 Q. The majority of the hearts you procure 9 are not on the OCS; is that right? 10 A. That's right. 11 Q. Would I be correct in assuming that 12 most of the OCS hearts you need to fly? 13 A. That's correct. 14 Q. Would it be all of them or just most of 15 them? 16 A. From the ones that we did, all of them 17 that we need to fly. 18 Q. Did you receive training from 19 TransMedics on the use of the OCS? 20 A. Yes, I did. 21 Q. One of the things we asked for in 22 discovery was training certificates from 23 TransMedics for a number of different people. 24 Do you have a certificate of completing your 25 training?</p>	<p style="text-align: center;">Page 21</p> <p>1 analyzer; right? 2 A. That's correct. 3 Q. Were you trained in how to use the 4 blood gas analyzer? 5 A. Can you clarify your question more? 6 Because when you are asking about this, about 7 the arterial blood gases, there are aspects who 8 will take the arterial blood gases, how to send 9 them to -- to put them on the machine, there are 10 multiple aspects. So can you be more specific? 11 Q. Yeah. No, that's fair. Let me -- let 12 me take a step back and ask a broader question 13 and maybe we can kind of get to this. 14 A. Sure. 15 Q. My understanding is that when a 16 procurement team from Mayo goes to get an OCS 17 heart, there's a number of different people who 18 go on that run; right? 19 A. Correct. 20 Q. There's at least one procurement 21 surgeon; yes? 22 A. Correct. 23 Q. Then there's also at least one -- is it 24 an OCS specialist? 25 A. Yes.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. Who else is on the team?</p> <p>2 A. Now you're talking about at least, at</p> <p>least one.</p> <p>4 Q. Okay. So at least one surgeon, at</p> <p>5 least one OCS specialist.</p> <p>6 A. Yes.</p> <p>7 Q. Are -- are there some OCS heart runs</p> <p>8 where that's the only two people who go on the</p> <p>9 run?</p> <p>10 A. Only two?</p> <p>11 Q. Yeah.</p> <p>12 A. Can you -- can you explain your --</p> <p>I cannot get your question perfectly.</p> <p>14 Q. No, that's fair. That's fair.</p> <p>15 I know that there were four people that</p> <p>16 went to get the donor heart that was attempted</p> <p>17 to be transplanted in Mr. Leopold; right?</p> <p>18 A. Okay.</p> <p>19 Q. You, Dr. Knop, Danielle Fay, and</p> <p>20 Michael Pick; right?</p> <p>21 A. Okay.</p> <p>22 Q. Was there anybody else on the</p> <p>23 procurement team in this case?</p> <p>24 A. I can't recall anyone else.</p> <p>25 Q. Okay. On that -- on that run, --</p>	<p style="text-align: right;">Page 24</p> <p>1 him is a perfusionist, right, the correct name</p> <p>for him?</p> <p>3 Q. I think that's right.</p> <p>4 A. Yes. Okay. Okay.</p> <p>5 Q. He's getting deposed next, so we'll</p> <p>6 find out for sure. But your understanding is</p> <p>7 he's a perfusionist.</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Would I be correct then in assuming</p> <p>10 that the minimum number of people on the team</p> <p>11 that will go to procure an OCS heart is three?</p> <p>12 A. That's correct.</p> <p>13 Q. Sometimes there's more than one</p> <p>14 surgeon, but not always.</p> <p>15 A. Not always, yes, but most of the time,</p> <p>two surgeons.</p> <p>17 Q. Why?</p> <p>18 A. Because of the OCS machine, it needs,</p> <p>you know, needs technical surgical -- I mean</p> <p>techniques that -- two surgeons make the</p> <p>procedure easier.</p> <p>22 Q. Understood.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Okay. So now back to the question that</p> <p>25 got us here in the first place. My</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- on the -- we're talking about in --</p> <p>3 specifically for this case, --</p> <p>4 A. Yes.</p> <p>5 Q. -- were both Michael Pick and Danielle</p> <p>6 Fay considered OCS specialists?</p> <p>7 A. Danielle, yes. And the other name?</p> <p>8 Q. Michael Pick.</p> <p>9 A. Michael Pick is the perfusionist.</p> <p>10 Q. He's a perfusionist.</p> <p>11 A. Yes.</p> <p>12 Q. Is there always a perfusionist that</p> <p>13 goes on an OCS heart procurement run?</p> <p>14 A. Perfusionist is always available for</p> <p>the heart and lungs regardless it is an OCS or</p> <p>non-OCS.</p> <p>17 Q. What do you mean when you say they're</p> <p>18 always available?</p> <p>19 A. Always come with us.</p> <p>20 Q. Always come with. Okay.</p> <p>21 A. Yes. And the --</p> <p>22 Q. So the --</p> <p>23 Oh, go ahead.</p> <p>24 A. I'm sorry. Just to clarify, what you</p> <p>25 mean Michael Pick, the -- the description for</p>	<p style="text-align: right;">Page 25</p> <p>1 understanding is that with respect to the OCS</p> <p>2 machine, there are some jobs that are being</p> <p>3 performed by the OCS specialist and not by the</p> <p>4 surgeon; like, for example, putting the lactates</p> <p>5 into the database; right?</p> <p>6 A. Correct.</p> <p>7 Q. You're not doing stuff like that.</p> <p>8 A. No.</p> <p>9 Q. Once the heart is on the OCS, --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- what's your job?</p> <p>12 MR. BRANTINGHAM: Object to the form of</p> <p>13 the question. Go --</p> <p>14 If you understand it, doctor, go ahead.</p> <p>15 A. Can you clarify more your question?</p> <p>16 You mean there are stages when we put the heart</p> <p>on the machine. I mean we put it at the donor</p> <p>site, --</p> <p>19 Q. Yep.</p> <p>20 A. -- we transfer it to the airport, we --</p> <p>then we are in the airplane, --</p> <p>22 Q. Uh-huh.</p> <p>23 A. -- and then we down from the airport to</p> <p>the hospital, --</p> <p>25 Q. Yep.</p>

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<p>1 A. -- and then, you know, at the operative 2 surgical theater. 3 Q. Understood. 4 A. So there are different things. 5 Q. All right. Well let's -- let's ask 6 some broader questions then. 7 A. Yes. 8 Q. First of all, as the procurement 9 surgeon, is it your job to determine whether the 10 donor heart is a suitable heart to be 11 transplanted? 12 A. A decision? 13 Q. Yes. 14 A. The decision, we -- we usually, when we 15 assess the donor, you know, we give the full 16 picture to the transplant surgeon. 17 Q. But the transplant surgeon doesn't see 18 the heart. Only you see the heart; right? 19 A. That's correct. 20 Q. And in fact, in this case the 21 transplant surgeon didn't have an opportunity to 22 actually look at the donor heart until Noah 23 Leopold's heart had already been explanted from 24 his body; right? 25 MR. BRANTINGHAM: Object to form and</p>	<p>1 A. Yes. 2 Q. And in the pre-OCS days, -- 3 A. Uh-huh. 4 Q. -- the way that the standard procedure 5 worked is that once the heart, the donor heart, 6 landed at the airport and was on the ground, -- 7 A. Uh-huh. 8 Q. -- somebody called back to the 9 hospital, told the transplant team we're on the 10 ground, and then the transplant team took out 11 the recipient's heart; right? 12 A. Uh-huh. 13 MR. BRANTINGHAM: Object to the form 14 and foundation. 15 Q. Is that -- 16 MR. BRANTINGHAM: Are you asking at 17 Mayo? Or are you asking in the world? 18 MR. THOMPSON: I'm asking in his 19 experience. 20 MR. BRANTINGHAM: Well just hold on one 21 second. Yeah. I'll object to the form and the 22 foundation. If you're able, doctor, you can 23 answer. 24 A. Because your question is so broad to 25 tell you. You are asking me not about this</p>
<p style="text-align: center;">Page 27</p> <p>1 foundation. 2 A. Do you want me to answer this question? 3 Q. Well you read the operative report; 4 right? 5 A. Yes, I read. I read, yes. 6 Q. Okay. Is it your understanding that 7 Noah Leopold's heart was still in his chest when 8 the donor heart arrived in the operating room? 9 MR. BRANTINGHAM: Object to foundation. 10 MR. THOMPSON: I'm asking him if that's 11 his understanding. 12 MR. BRANTINGHAM: I understand what 13 you're asking. I'm objecting to foundation. 14 Doctor, if you know the answer to the 15 question, you can answer it. 16 A. Can you clarify more -- more -- your 17 question more? 18 Q. Yeah. Let me take a step back. 19 Sometimes -- 20 Well let's go back in the pre-OCS days. 21 A. Okay. 22 Q. You were involved in transplants before 23 OCS was a thing; right? 24 A. Yeah. I mean before the OCS. Okay. 25 Q. Yeah.</p>	<p style="text-align: center;">Page 29</p> <p>1 donor or about this donor? 2 Q. Okay. Were you involved in transplants 3 before you started working at Mayo? 4 A. Before? 5 Q. Yes. 6 A. No. 7 Q. Okay. So then when we talk about your 8 experience with transplant surgery, it's only at 9 Mayo; right? 10 A. Okay. Yes. 11 Q. Am I right about that? 12 A. Yes. 13 Q. All right. So let's talk about your 14 experience at Mayo. 15 A. Yes. 16 Q. You told me that one of the parts of 17 the procurement run is the heart's got to get 18 into the operating room; right? 19 A. Yes. 20 Q. The donor heart has to get into the 21 operating room; correct? 22 A. Correct. 23 Q. Now do you accompany the donor heart 24 into the operating room? Have you ever done 25 that?</p>

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<p>1 A. It's all the time.</p> <p>2 Q. Okay. Have there been times when 3 you're accompanying the donor heart into the 4 operating room and the native heart, the 5 recipient's heart, has already been explanted 6 when you show up with the donor heart?</p> <p>7 A. You mean when the heart is in the room, 8 the donor heart in the room, you mean whether 9 the heart is explanted from the recipient or 10 not, that's your question?</p> <p>11 Q. My question is: When you bring the 12 donor heart into the operating room, --</p> <p>13 A. Yes.</p> <p>14 Q. -- have there been times when the 15 recipient's native heart has already been 16 explanted by the time you arrive?</p> <p>17 A. For this donor or different donor?</p> <p>18 Q. I'm asking: Has -- does that ever 19 happen?</p> <p>20 A. I can't recall for this donor in 21 particular, but --</p> <p>22 Q. That's not my question.</p> <p>23 A. -- but in general -- in general, 24 sometimes, yes, but not before I mean being in 25 Rochester, you know.</p>	<p>1 Q. And the recipient's heart gets 2 explanted while the donor heart is on its way to 3 the hospital, and by the time you get there, the 4 native heart has been removed. You've seen that 5 happen before; right?</p> <p>6 A. I can recall, yes.</p> <p>7 Q. With respect to this case, you're 8 telling me you don't remember?</p> <p>9 A. I can't remember.</p> <p>10 Q. Okay. In reviewing the operative 11 report, do you have a belief as to whether Noah 12 Leopold's native heart was removed by the time 13 the donor heart arrived?</p> <p>14 MR. BRANTINGHAM: Object to foundation.</p> <p>15 A. Say it again. Say it again.</p> <p>16 Q. You've read the operative report --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- and it's detailed; right?</p> <p>19 A. Uh-huh. Okay.</p> <p>20 Q. Yep. And you've worked with Dr. 21 Villavicencio many times; right?</p> <p>22 A. Yes.</p> <p>23 Q. Right? So you know the way he 24 practices?</p> <p>25 A. Yes, I do.</p>
<p>1 Q. And I think we're on the same page 2 about this.</p> <p>3 A. Yes.</p> <p>4 Q. The way that it works, --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- in your experience, --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- is that the heart lands successfully 9 in Rochester.</p> <p>10 A. Yes.</p> <p>11 Q. Because we don't -- 12 I mean planes can crash.</p> <p>13 A. Yes.</p> <p>14 Q. Right? We want to make sure the heart 15 is in Rochester.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And now the heart is on its way from 18 the airport to St. Mary's; --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- right?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Yes? You got to say yes.</p> <p>23 A. Yes. Yes.</p> <p>24 Q. You're with me.</p> <p>25 A. Yes.</p>	<p>1 Q. Okay. How many transplant surgeons are 2 there at Mayo? Is it Villavicencio, Daly, and 3 Spencer?</p> <p>4 A. Because there are many transplants at 5 Mayo.</p> <p>6 Q. Heart transplants.</p> <p>7 A. You're specific. Yes.</p> <p>8 So we're having Dr. Daly, Dr. 9 Villavicencio, and Dr. PJ Spencer.</p> <p>10 Q. Yep.</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. Yes.</p> <p>14 Q. Three transplant surgeons doing heart 15 transplants.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So with respect to 18 Villavicencio, do you have an opinion -- and if 19 you don't, that's fine, just tell me that --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- as to whether he took Noah Leopold's 22 heart before this heart got into the operating 23 room?</p> <p>24 MR. BRANTINGHAM: Object to foundation 25 and form.</p>

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<p>1 A. I can't recall. 2 Q. I know you can't recall. 3 A. Uh-huh. 4 Q. Do you have an opinion one way another? 5 And if you don't, that's fine. 6 A. I don't. 7 MR. BRANTINGHAM: Same objection. 8 Q. Okay. 9 MR. BRANTINGHAM: Doctor, just make 10 sure you take a second so that I can get the 11 objection in -- 12 THE WITNESS: Okay. 13 MR. BRANTINGHAM: -- and then answer. 14 THE WITNESS: Okay. Sure. 15 MR. BRANTINGHAM: Just take a little 16 breath. 17 THE WITNESS: Sure. 18 BY MR. THOMPSON: 19 Q. All right. So the series of questions 20 that got us going here had to do with your job 21 when it comes to the procurement of the organ. 22 Now you are the first person from the 23 Mayo team that has a chance to look visually at 24 the donor heart; right? 25 MR. BRANTINGHAM: Are you asking this</p>	<p>1 not, we assess if there is any anomaly of the 2 heart, we assess if there is any injury in the 3 heart regarding the -- the reason for death for 4 that donor -- for any donor, I mean, and then we 5 transfer the whole picture to the transplant 6 surgeon. 7 Q. When you say you assess the 8 hemodynamics, are you talking about looking at 9 the echo? 10 A. Blood pressure, heart rate, respiratory 11 rate, these are the hemodynamics that we assess. 12 Q. Presumably the ejection fraction is 13 important? 14 A. These are part of the echo assessment 15 of the heart. 16 Q. Do you look at the echo as part of 17 doing your assessment of the heart? 18 A. Of course. 19 Q. Do you do that before you leave 20 Rochester, or once you get to the donating 21 institution? 22 A. Before we leave from here. 23 Q. Do you review the UNOS records before 24 you leave Rochester? 25 A. Yes, we do.</p>
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<p>1 case or in general? 2 MR. THOMPSON: Well in general. 3 A. Visually. 4 Q. Yeah. 5 A. Yes. 6 Q. And so one of the most important parts 7 of your job as the procuring surgeon is to first 8 make an assessment of, yeah, this looks like a 9 heart that we could transplant, or no, we're not 10 going to transplant this heart; right? 11 A. We usually -- 12 This is the way, whether we accept or 13 turn down the organ, we assess the heart and 14 give the full picture to the transplant surgeon. 15 Q. What do you mean when you say "the full 16 picture?" What information are you giving them? 17 A. Yes, we assess the heart. I mean -- 18 Q. I don't know what that means. 19 A. Visual. Visual assessment of the 20 heart. 21 Q. Okay. 22 A. Then we palpate the coronary arteries, 23 we palpate the pulmonary artery, we palpate the 24 aorta, and we assess the hemodynamics of the 25 heart, we see if the heart is on inotropes or</p>	<p>1 Q. Can you and I agree that the size of a 2 heart is an important part of assessing whether 3 it is suitable to be transplanted? 4 A. Yes. 5 Q. Do you have kind of a cutoff parameter 6 in terms of when a heart is too undersized or 7 too oversized compared to the recipient? 8 MR. BRANTINGHAM: Object to the form, 9 foundation. Are you asking -- 10 When you say "you," are you asking him 11 personally? 12 MR. THOMPSON: Yeah. I don't know how 13 else I could mean "you," but yes. 14 MR. BRANTINGHAM: Well it could mean as 15 an institution, et cetera, -- 16 MR. THOMPSON: Sure. 17 MR. BRANTINGHAM: -- so -- 18 Q. When I say "you," I mean you. And if 19 I'm talking about Mayo, I'll say "Mayo." Okay? 20 A. Okay. 21 Q. All right. 22 A. So the selection committee, for the 23 donors they are taking, and this is out of my -- 24 my -- I mean role. 25 Q. Assessing the size is outside of your</p>

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<p>1 role?</p> <p>2 A. No. I'm looking, but the selection 3 committee are the ones that, you know, choose 4 the right donor for the right recipient.</p> <p>5 Q. Okay. So if you see a heart and you 6 say, boy, his heart looks really oversized, do 7 you say something?</p> <p>8 A. When we visually assess?</p> <p>9 Q. Yeah.</p> <p>10 A. We give this idea to the transplant 11 surgeon, that this is -- the heart is small, 12 it's big, I mean whatever we find, we give this 13 whole picture to the transplant surgeon.</p> <p>14 Q. You do that via a phone call?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you communicate the 17 information about your overall assessment of the 18 potential donor heart in any way other than 19 through a phone call?</p> <p>20 A. You mean this heart or in general?</p> <p>21 Q. No. In general.</p> <p>22 A. Yes. So first communication between 23 two of the surgeons, you know, between me and 24 the other surgeon or the other surgeon or me, 25 that --</p>	<p>1 Q. Okay. Do you remember this 2 procurement?</p> <p>3 A. I can recall part of them, but --</p> <p>4 Q. Okay.</p> <p>5 A. -- part of it, but the whole event --</p> <p>6 Q. Okay. Do you remember where you went 7 to procure this heart?</p> <p>8 A. Idaho, I believe.</p> <p>9 Q. Huh?</p> <p>10 A. Idaho.</p> <p>11 Q. Idaho. Yep. Uh-huh. 12 All right. You know that there have 13 been -- well maybe you don't. 14 Do you know that there have been some 15 text messages produced in this case?</p> <p>16 A. Between me?</p> <p>17 Q. No, between other people. Not you. 18 There's no text from you.</p> <p>19 A. Yeah.</p> <p>20 Q. Did you know that there were text 21 messages produced in this case that have to do 22 with this case?</p> <p>23 A. Yes. I make sure in that -- in that 24 case and in any case that, you know, the 25 information passed from me that the heart is</p>
<p>1 Q. You're talking about the transplant 2 surgeon?</p> <p>3 A. No. First the procuring, I mean when 4 we are at the donor site.</p> <p>5 Q. You and Dr. Knop.</p> <p>6 A. Yes. That this heart -- you know, we 7 assess -- we give two assessment between, you 8 know, and -- and then we transfer this to the -- 9 to the transplant surgeon.</p> <p>10 Q. Via phone call.</p> <p>11 A. Via phone call.</p> <p>12 Q. Ever send a text?</p> <p>13 A. I can't recall in this -- in this -- in 14 this donor in particular, but sometimes when we 15 are, you know, in the -- in the OR, they are 16 scrubbing, you know, we transfer the whole 17 information, you know, either the -- the 18 perfusionist open the phone for us -- open the 19 phone for us --</p> <p>20 Q. Okay. I'm listening.</p> <p>21 A. -- open the phone for us, or he pass 22 this piece of information to the -- that the 23 heart is good and no -- no problems.</p> <p>24 Q. Uh-huh.</p> <p>25 A. Uh-huh.</p>	<p>1 okay and it's good to take to the transplant 2 surgeon, and the perfusionist will, you know, 3 say okay -- I mean, yes, transfer this 4 information to the transplant surgeon.</p> <p>5 Q. I get that. We'll get into that. That 6 wasn't my question.</p> <p>7 A. Uh-huh.</p> <p>8 Q. My question was: Are you aware of the 9 fact that there are text messages about this 10 case that have been produced in the course of 11 this lawsuit?</p> <p>12 A. I can't recall, I mean, there were 13 messages. Can you --</p> <p>14 Q. No.</p> <p>15 MR. BRANTINGHAM: He may not understand 16 what you mean by "produced" --</p> <p>17 MR. THOMPSON: Yeah. And that's fair.</p> <p>18 MR. BRANTINGHAM: -- in this context.</p> <p>19 Q. So one of the things that happens in a 20 lawsuit --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- is the lawyers get to send requests 23 for production --</p> <p>24 A. Oh.</p> <p>25 Q. -- back and forth to -- hold on --</p>

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<p>1 A. Okay.</p> <p>2 Q. -- back and forth to each other</p> <p>3 basically asking for stuff.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And one of the things that I asked Mayo</p> <p>6 for was, hey, do you guys have any text messages</p> <p>7 or other communications about this case, about</p> <p>8 this donor, and if you do, will you send them to</p> <p>9 me. And so Mayo sent me a bunch of text</p> <p>10 messages that have to do with this case.</p> <p>11 A. Uh-huh.</p> <p>12 Q. None of them were sent or received by</p> <p>13 you, but some of them have your name on them and</p> <p>14 we're going to talk about them.</p> <p>15 My question right now is: Did you know</p> <p>16 there were text messages about this case?</p> <p>17 A. Yeah. That's -- that's a different</p> <p>18 question actually, if I understand it. I recall</p> <p>19 there are -- there are questions -- I mean there</p> <p>20 are messages that -- I hear there are messages,</p> <p>21 but I -- I don't know exactly what's going on in</p> <p>22 these messages.</p> <p>23 Q. Have you ever seen any of the messages?</p> <p>24 A. Because the -- the ones that I can see</p> <p>25 are from the ones that from my phone actually.</p>	<p>1 But you know that there are text</p> <p>2 messages that other people did find. And my</p> <p>3 question is: Have you ever seen them?</p> <p>4 A. In the phones, no, but I -- I saw part</p> <p>5 of them, you know, at certain time, but part of</p> <p>6 them just, you know, the thumbs up. That's --</p> <p>7 that's something I saw that --</p> <p>8 Q. Yeah.</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. So one of the text messages we</p> <p>11 have, and this is Bates stamp 25084, --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- is a couple of pretty short text</p> <p>14 messages from Michael Pick -- between Michael</p> <p>15 Pick and Dr. Villavicencio.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Have you ever seen those?</p> <p>18 A. No.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Q. No, I get that.</p> <p>2 Presumably you looked at your phone to</p> <p>3 see if you had any text messages that related to</p> <p>4 this case?</p> <p>5 A. From my phone?</p> <p>6 Q. Yes.</p> <p>7 A. No, I cannot.</p> <p>8 Q. You haven't --</p> <p>9 A. They probably got deleted, but I cannot</p> <p>10 see them.</p> <p>11 Q. My question was --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- as part of being involved in this</p> <p>14 case, --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- have you ever looked on your</p> <p>17 phone --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- to see if there were text messages</p> <p>20 about this case from August 29th or August 30th</p> <p>21 of 2023?</p> <p>22 A. Yes, I did.</p> <p>23 Q. And you found none.</p> <p>24 A. Exactly.</p> <p>25 Q. Great.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>1 </p> <p>2 </p> <p>3 </p> <p>4 </p> <p>5 </p> <p>6 </p> <p>7 </p> <p>8 </p> <p>9 </p> <p>10 </p> <p>11 </p> <p>12 </p> <p>13 </p> <p>14 </p> <p>15 </p> <p>16 </p> <p>17 </p> <p>18 </p> <p>19 </p> <p>20 </p> <p>21 </p> <p>22 </p> <p>23 </p> <p>24 </p> <p>25 </p>

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<p>1 surgeon. Correct?</p> <p>2 Q. Yeah. Because I thought you told me --</p> <p>3 and maybe I'm wrong, Mr. Brantingham thinks I'm</p> <p>4 wrong and that's fine, there's lot of things</p> <p>5 that he'll -- he's going to think I'm wrong</p> <p>6 about over the course of these next few days --</p> <p>7 I thought you told me that one of the parts of</p> <p>8 you doing your job as the procurement surgeon is</p> <p>9 that you do this global assessment of the</p> <p>10 overall picture of the heart where you're</p> <p>11 looking -- visually looking at it and you're</p> <p>12 palpating the vessels and you're assessing the</p> <p>13 hemodynamics and you're looking for anomalies</p> <p>14 and you're looking for injuries and you're doing</p> <p>15 a bunch of really careful stuff; right?</p> <p>16 A. Right.</p> <p>17 Q. And you're supposed to do that in every</p> <p>18 one of these cases where you go to procure a</p> <p>19 heart; right?</p> <p>20 A. Right.</p> <p>21 Q. Because you are, in that instance, the</p> <p>22 eyes of the transplant surgeon because the</p> <p>23 transplant surgeon doesn't see the heart, the</p> <p>24 transplant surgeon doesn't palpate the heart;</p> <p>25 right?</p>	<p>1 Q. Great.</p> <p>2 Is an important part of your job</p> <p>3 palpating the vessels, as you described for us</p> <p>4 in some detail maybe about 20 minutes ago?</p> <p>5 A. Yes.</p> <p>6 Q. Is an important part of your job</p> <p>7 looking to see if there are any anomalies on the</p> <p>8 heart?</p> <p>9 A. Yes.</p> <p>10 Q. Is an important part of your job</p> <p>11 looking to see if there are any signs of an</p> <p>12 injury to the heart, like bruising?</p> <p>13 A. Yes.</p> <p>14 Q. Bruising doesn't show up on an echo;</p> <p>15 does it?</p> <p>16 A. It may show.</p> <p>17 Q. Yeah. Often it doesn't; does it?</p> <p>18 MR. BRANTINGHAM: Object to the form.</p> <p>19 If you able, doctor.</p> <p>20 Q. Do you not know?</p> <p>21 MR. BRANTINGHAM: Well hold on a</p> <p>22 second.</p> <p>23 Q. My --</p> <p>24 MR. BRANTINGHAM: Let him ans -- let</p> <p>25 him answer the question you asked.</p>
<p style="text-align: center;">Page 47</p> <p>1 MR. BRANTINGHAM: Object to the form,</p> <p>2 foundation.</p> <p>3 A. The transplant surgeon does have an</p> <p>4 idea about this heart by the echo and the</p> <p>5 catheterization.</p> <p>6 Q. None of that was my question. We've</p> <p>7 got to stick with my questions.</p> <p>8 A. Uh-huh.</p> <p>9 Q. My question was: The transplant</p> <p>10 surgeon doesn't actually have an opportunity to</p> <p>11 look at the heart, only you can do that; right?</p> <p>12 MR. BRANTINGHAM: Object to the</p> <p>13 foundation and form.</p> <p>14 A. You say visually?</p> <p>15 Q. Yeah. Is that part of --</p> <p>16 Is that an important part of your</p> <p>17 assessment as the procuring surgeon, to actually</p> <p>18 visually look at the heart?</p> <p>19 MR. BRANTINGHAM: Object to the form.</p> <p>20 Q. That's my question. And it seems</p> <p>21 pretty obvious to me, but you can answer. Is an</p> <p>22 important part of your job, as the procuring</p> <p>23 surgeon who is assessing this heart, looking at</p> <p>24 it?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">Page 49</p> <p>1 MR. THOMPSON: Well he wasn't, he was</p> <p>2 just shaking his head and kind of shrugging his</p> <p>3 shoulders.</p> <p>4 MR. BRANTINGHAM: Well just let him --</p> <p>5 A. I'm --</p> <p>6 MR. BRANTINGHAM: -- give him the</p> <p>7 chance to answer.</p> <p>8 MR. THOMPSON: I -- I was.</p> <p>9 MR. BRANTINGHAM: You didn't. You then</p> <p>10 asked another question. If you want an answer</p> <p>11 to the question which was -- if we can read it</p> <p>12 back. Go ahead.</p> <p>13 (Record read by the reporter.)</p> <p>14 MR. BRANTINGHAM: No, the one before</p> <p>15 that.</p> <p>16 THE REPORTER: Okay.</p> <p>17 Q. I'll reask the question. Because the</p> <p>18 question before that was I asked you if echos --</p> <p>19 if bruising would show up on echos, you said</p> <p>20 sometimes it will, and I said most of the time</p> <p>21 it doesn't, and you shrugged your shoulders. Do</p> <p>22 you have an answer to that?</p> <p>23 MR. BRANTINGHAM: You said often. You</p> <p>24 said often it doesn't.</p> <p>25 Q. Do you have an answer?</p>

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<p>1 MR. BRANTINGHAM: If you can answer 2 with often, go ahead.</p> <p>3 A. So your question is does the bruises 4 show in the -- in the -- on the echo or not?</p> <p>5 Q. The exact question was, --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- to Mr. Brantingham's point, often --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- bruising will not show up on 10 echo; --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- isn't that true?</p> <p>13 A. I mean I'm a surgeon, you know, and 14 I -- I don't think that's something that they 15 are often shown in the echo actually.</p> <p>16 Q. Right. Okay.</p> <p>17 A. Yeah.</p> <p>18 Q. The -- the over --</p> <p>19 A. But if -- if there is --</p> <p>20 Q. Go ahead.</p> <p>21 A. -- an echo specialist that can see, 22 that's something different, but I don't think 23 that's something common, I mean, to be assessed 24 by the echo.</p> <p>25 Q. Sure. The overall point here is there</p>	<p>1 that day.</p> <p>2 Q. My question is: Do you think that you 3 actually spoke to Dr. Villavicencio about this 4 heart before you left Idaho?</p> <p>5 A. Before?</p> <p>6 Q. Yes. Before you left Idaho.</p> <p>7 A. I can't recall.</p> <p>8 Q. Do you think you should have?</p> <p>9 A. The -- 10 My role is to communicate.</p> <p>11 Q. To the transplanting surgeon?</p> <p>12 A. Yes.</p> <p>13 Q. Right. I understand that. That is 14 your role.</p> <p>15 So my question is: Can't you agree 16 that you should be having a direct conversation 17 with the transplanting surgeon?</p> <p>18 MR. BRANTINGHAM: Object to the form 19 and the foundation. You can answer if you're 20 able, doctor.</p> <p>21 A. I believe there should be a type of -- 22 the information should be passed to the surgeon 23 in -- in --</p> <p>24 Q. What information?</p> <p>25 A. The best one and the best informant of</p>
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<p>1 are lots of pieces of your assessment beyond 2 just looking at the echo; right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Yes?</p> <p>5 A. Yes.</p> <p>6 Q. And the echo is available to the 7 transplanting surgeon, but not the visual and 8 physical assessment that you are performing at 9 the donor institution; right?</p> <p>10 A. Yes.</p> <p>11 Q. Now that sort of information, here's 12 what I found when I palpated the vessels, here's 13 what the hemodynamics look like, here's just 14 overall visually what the heart looks like, 15 those are the sorts of things that you're 16 supposed to be communicating back to the 17 transplanting surgeon on a phone call; right?</p> <p>18 A. Right.</p> <p>19 Q. Okay. So now back to this text-message 20 question. First of all, do you think you had 21 that phone call with Dr. Villavicencio about 22 this heart?</p> <p>23 A. I can't recall the method of 24 communication was, but it was sure there was a 25 method of communication between -- with Dr. V</p>	<p>1 that, we are in the same -- the procurement 2 surgeon -- surgeons and the transplant surgeon 3 is a real visual -- vision of the heart, --</p> <p>4 Q. Uh-huh.</p> <p>5 A. -- and that happened. There was a 6 video, if you are aware of, of the heart in the 7 OCS machine.</p> <p>8 Q. Yep.</p> <p>9 A. Yes.</p> <p>10 Q. Yep.</p> <p>11 A. That's --</p> <p>12 Q. None of that was my question, but 13 that's okay.</p> <p>14 A. That's -- that's a type -- that's a 15 very good type of communication, because what 16 you see is what we -- what we see. What you 17 see, what we see.</p> <p>18 Q. Unless I'm mistaken, Dr. Villavicencio 19 doesn't have the ability to reach through the 20 video and palpate those vessels; does he?</p> <p>21 A. That's correct.</p> <p>22 Q. Only you can do that; right?</p> <p>23 MR. BRANTINGHAM: You can answer that 24 question. Go ahead --</p> <p>25 A. On the donor?</p>

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<p>1 MR. BRANTINGHAM: -- if you're able. 2 Q. Yeah. 3 A. Yes. 4 Q. Now we've got the video. 5 A. Uh-huh. 6 Q. The video only shows one side of the 7 heart; right? 8 A. Uh-huh. 9 Q. Right? Yes? You got to say yes out 10 loud for the record. 11 A. The video is a three dimensional, you 12 know. 13 Q. The video is not three dimensional. 14 The video is -- 15 MR. BRANTINGHAM: I think we'll 16 stipulate the video is the video, Brandon. 17 MR. THOMPSON: No, I understand that, 18 and we're going somewhere with this. 19 Q. The video is two dimensional. 20 A. It is -- 21 Q. It is flat on a computer screen; right? 22 MR. BRANTINGHAM: Just wait for the 23 question, doctor. 24 Q. We're not in virtual reality here. It 25 is a two-dimensional shot of that heart in a box</p>	<p>1 A. Yes. 2 Q. Can you and I agree that the standard 3 of care requires the procuring surgeon to 4 actually have a conversation with the transplant 5 surgeon about whether this heart is suitable? 6 MR. BRANTINGHAM: Object to foundation. 7 You can answer if you're able. 8 A. There should be a communication between 9 the procurement surgeon and the transplant 10 surgeon. 11 Q. Okay. But in your view it would be 12 enough for that communication to be third hand 13 from the perfusionist, "Salah said Heart looks 14 good" and that's it. 15 MR. BRANTINGHAM: I'll object to the 16 form, argumentative. That doesn't remotely -- 17 MR. THOMPSON: Okay. I'm going to ask 18 it a different way. 19 MR. BRANTINGHAM: Hang on a second. 20 That doesn't remotely resemble what he said. 21 You're now just putting -- 22 MR. THOMPSON: It does. 23 MR. BRANTINGHAM: You're putting words 24 into his mouth. 25 MR. THOMPSON: Andrew, stop.</p>
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<p>1 behind plexiglas in plastic; right? 2 MR. BRANTINGHAM: Object to the form. 3 You can answer if you understand the question. 4 A. Can you clarify your question more? 5 Q. Yeah. I'll ask a different question. 6 A. Yes. 7 Q. If all you have to do is send the 8 transplanting surgeon a video of the heart, why 9 would you need to communicate with him ever? 10 MR. BRANTINGHAM: I just object to the 11 form, it's argumentative. Do you understand the 12 question? 13 A. Not truly, but if -- 14 MR. BRANTINGHAM: Okay. Let -- 15 Q. No, that's okay. 16 MR. BRANTINGHAM: -- him ask another 17 question. 18 Q. If you don't understand the question, 19 we're going to ask a different question. 20 A. If you want me to ans -- 21 MR. BRANTINGHAM: Just -- no, no, no. 22 Let him ask another question. 23 THE WITNESS: Okay. 24 Q. Let me ask a broader question that I 25 think should be pretty easy to answer.</p>	<p>1 MR. BRANTINGHAM: No, seriously. 2 MR. THOMPSON: Make your -- stop. 3 MR. BRANTINGHAM: Okay. 4 MR. THOMPSON: Make an objection, and 5 then we'll go. 6 MR. BRANTINGHAM: Okay. 7 MR. THOMPSON: Don't make comments, 8 just make an objection. If you think that -- if 9 you think that I'm misinterpreting what he's 10 saying, that's fine, but it's not your place to 11 say that on the record. That's called coaching 12 the witness. If he thinks I'm misinterpreting 13 what he's saying, it's his job to tell me that, 14 not yours. So make your objection and then I'm 15 going to ask a question. 16 MR. BRANTINGHAM: Okay. My objection 17 is to foundation. 18 MR. THOMPSON: Okay. 19 MR. BRANTINGHAM: My objection is also 20 to asking the witness -- 21 MR. THOMPSON: That's -- 22 Mr. BRANTINGHAM: -- questions about 23 documents that you're sitting here looking at 24 and not showing him. 25 MR. THOMPSON: Neither one of those</p>

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<p>1 things are anywhere close to an appropriate 2 objection --</p> <p>3 MR. BRANTINGHAM: Fine.</p> <p>4 MR. THOMPSON: -- in a deposition, and 5 you know it. Foundation is not an appropriate 6 objection in a deposition and you know it.</p> <p>7 MR. BRANTINGHAM: It is.</p> <p>8 MR. THOMPSON: Form is the only 9 appropriate objection or if you're going to 10 assert a privilege. That's it.</p> <p>11 MR. BRANTINGHAM: I can object to 12 foundation and I will.</p> <p>13 MR. THOMPSON: That's fine. It's a -- 14 it's not a valid objection. You can --</p> <p>15 MR. BRANTINGHAM: Go ahead and ask your 16 question.</p> <p>17 MR. THOMPSON: -- you can make it.</p> <p>18 BY MR. THOMPSON:</p> <p>19 Q. My question is this: Take a look at 20 that text message. This one right here. See 21 [REDACTED]</p> <p>22 Do you see that?</p> <p>23 A. Yes, I did.</p> <p>24 Q. That's my first question. 25 These are text messages between Michael</p>	<p>1 Q. Go ahead. I'll take an answer to my 2 question.</p> <p>3 A. Can you make your question more 4 precise?</p> <p>5 Q. If this is the only communication back 6 to Dr. Villavicencio about the suitability of 7 that heart to be transplanted, do you think that 8 complies with the standard of care?</p> <p>9 MR. BRANTINGHAM: Same objections.</p> <p>10 A. Can you repeat your question?</p> <p>11 MR. THOMPSON: Read it back to him, 12 please.</p> <p>13 THE REPORTER: Sure. (Record read by the reporter.)</p> <p>14 A. But we're having, you know, 15 communication with Dr. V. I can't recall the 16 exact method of communication, but we -- I'm 17 confident there was a communication.</p> <p>18 Q. Okay. I'll take an answer to my 19 question first, and then we'll go and talk about 20 what other communication there was.</p> <p>21 Do you need me to ask my question 22 again?</p> <p>23 A. Yes.</p> <p>24 Q. Assuming that that was the only</p>
<p>1 Pick and Dr. Villavicencio. Now I'm going to 2 represent to you this is the only evidence that 3 has been produced anywhere in this litigation 4 about any communication back to Dr. 5 Villavicencio about the suitability of that 6 heart. Now if this is the only communication 7 back to Villavicencio about the suitability of 8 that heart, do you think that meets the standard 9 of care?</p> <p>10 MR. BRANTINGHAM: Hold on. Object to 11 the foundation and the form of the question.</p> <p>12 Q. Go ahead.</p> <p>13 MR. BRANTINGHAM: It is explicitly --</p> <p>14 MR. THOMPSON: No. That's --</p> <p>15 MR. BRANTINGHAM: -- hypothetical.</p> <p>16 MR. THOMPSON: You --</p> <p>17 That's not a hypothetical at all.</p> <p>18 MR. BRANTINGHAM: Go ahead and answer 19 if you're able.</p> <p>20 MR. THOMPSON: You've made your 21 objection. Stop saying "if you're able." 22 That's coaching. There's lots of case law on 23 this.</p> <p>24 MR. BRANTINGHAM: No, it's not.</p> <p>25 MR. THOMPSON: Yes, it is.</p>	<p>1 communication back to Dr. Villavicencio, is it 2 your testimony that that would comply with the 3 standard of care?</p> <p>4 MR. BRANTINGHAM: I'll object to the 5 form and the foundation again.</p> <p>6 Q. And I'll take an answer. Either you 7 think it complies with the standard of care or 8 you agree with me, which I think is obvious, 9 that no, that would not be enough.</p> <p>10 MR. BRANTINGHAM: I'll object to 11 that --</p> <p>12 A. Can I have --</p> <p>13 MR. BRANTINGHAM: Do you have an 14 addition to the question?</p> <p>15 A. -- the ability not to answer your 16 question?</p> <p>17 Q. No. You have to answer my questions.</p> <p>18 A. Yes. I -- I don't know. Do you want 19 this answer?</p> <p>20 Q. That's fair. You don't know.</p> <p>21 A. I --</p> <p>22 Q. You don't know whether that would be 23 enough?</p> <p>24 A. No. I don't know your question.</p> <p>25 MR. BRANTINGHAM: Hold on. Just --</p>

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<p>1 hold on, hold on, hold on.</p> <p>2 A. I don't know your question.</p> <p>3 MR. BRANTINGHAM: Stop, doctor. Hang</p> <p>4 on. We need to avoid the crosstalk.</p> <p>5 THE WITNESS: Uh-huh.</p> <p>6 MR. BRANTINGHAM: Okay? So let him ask</p> <p>7 an actual question, take your time, and then</p> <p>8 answer it.</p> <p>9 MR. THOMPSON: I think --</p> <p>10 Yeah, that's fine. I've asked it three</p> <p>11 times.</p> <p>12 THE WITNESS: Uh-huh.</p> <p>13 MR. THOMPSON: It still hasn't been</p> <p>14 answered, but we'll try again.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. THOMPSON:</p> <p>17 Q. Assuming that this text message from</p> <p>18 [REDACTED]</p> <p>19 Villavicencio about the suitability of that</p> <p>20 heart for transplant, do you think that would</p> <p>21 comply with the standard of care?</p> <p>22 MR. BRANTINGHAM: Object to the form</p> <p>23 and foundation.</p> <p>24 A. We were confident of our --</p>	<p>1 MR. BRANTINGHAM: Please.</p> <p>2 MR. THOMPSON: I get to direct him to</p> <p>3 the question that I'm asking. He's not</p> <p>4 answering that question. I've now asked it</p> <p>5 three times. I'm going to have to ask it four</p> <p>6 times because he's not answering the question</p> <p>7 that I'm asking. He's trying to answer some</p> <p>8 other question. That's fine. If we want to let</p> <p>9 him continue to do that, I would have --</p> <p>10 actually expect you to step in and say the</p> <p>11 question is blah. If you don't want to do that,</p> <p>12 that's fine.</p> <p>13 Q. I didn't mean to interrupt you. Go</p> <p>14 ahead and give your answer, and then we'll see</p> <p>15 if that's an answer to my question.</p> <p>16 A. There was a clear communication between</p> <p>17 the donor surgeons and the transplant surgeon</p> <p>18 regarding this heart.</p> <p>19 Q. What donor surgeons?</p> <p>20 A. The two procurement surgeons.</p> <p>21 Q. You say there was a clear</p> <p>22 communication. What clear communication?</p> <p>23 A. About the picture of the heart at the</p> <p>24 donor site and at the OCS.</p> <p>25 Q. Okay. So your testimony is that the</p>
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<p>1 Q. You're not answering my question.</p> <p>2 MR. BRANTINGHAM: Let him answer the</p> <p>3 question then.</p> <p>4 A. Don't interrupt --</p> <p>5 MR. THOMPSON: No. He's not answering</p> <p>6 the question.</p> <p>7 MR. BRANTINGHAM: He gets to answer the</p> <p>8 question. You don't get to cut him off.</p> <p>9 MR. THOMPSON: We'll be here all day,</p> <p>10 and that's fine.</p> <p>11 MR. BRANTINGHAM: That's fine, too, by</p> <p>12 me, but let him answer the question.</p> <p>13 Q. Go ahead. But you got to answer my</p> <p>14 question.</p> <p>15 MR. BRANTINGHAM: You can answer --</p> <p>16 A. I --</p> <p>17 MR. BRANTINGHAM: Hold on. You don't</p> <p>18 get to tell the witness how you want the</p> <p>19 question answered, Brandon. I know you know the</p> <p>20 rules just like you know I know the rules. This</p> <p>21 is JV stuff.</p> <p>22 MR. THOMPSON: I get to direct him to</p> <p>23 answer the question that I'm -- let me finish.</p> <p>24 MR. BRANTINGHAM: Yeah. Please.</p> <p>25 MR. THOMPSON: Don't talk over me.</p>	<p>1 clear communication was Michael Pick sent a</p> <p>2 video of the heart.</p> <p>3 MR. BRANTINGHAM: Object to the form.</p> <p>4 A. I can't recall the type of</p> <p>5 communication, but every time we make sure there</p> <p>6 is a clear communication about the donor heart.</p> <p>7 Q. Do you think it's enough, and now we've</p> <p>8 got the video in there, do you think it's enough</p> <p>9 [REDACTED]</p> <p>10 of the heart? Does that comply with the</p> <p>11 standard of care in your view?</p> <p>12 MR. BRANTINGHAM: Object to form and</p> <p>13 foundation.</p> <p>14 A. I'm confident there was a clear</p> <p>15 communication about the picture of the donor at</p> <p>16 the -- at the donor site -- the heart at the</p> <p>17 donor site and at the machine.</p> <p>18 Q. We'll talk about that in a second.</p> <p>19 A. Sure.</p> <p>20 Q. With respect, that's not my question.</p> <p>21 I'm not asking you whether you were confident</p> <p>22 there was a clear communication. I'm asking</p> <p>23 you: If the only communication was this text</p> <p>24 message and the video of the heart, do you think</p>

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<p>1 that would be enough communication to comply 2 with accepted standards of medical practice?</p> <p>3 MR. BRANTINGHAM: Do you understand, 4 doctor?</p> <p>5 THE WITNESS: I --</p> <p>6 MR. BRANTINGHAM: He's asking you to 7 assume certain facts.</p> <p>8 THE WITNESS: I --</p> <p>9 MR. BRANTINGHAM: He's not asking you 10 about what you know, he's asking you to assume a 11 set of facts that he's creating and asking you 12 about that.</p> <p>13 A. You know, I'm -- you can -- you can -- 14 you can -- you can ask any question to me 15 regarding this donor, and that's why I'm -- I'm 16 here, but you are asking about the standards of 17 care, you know. I don't exactly understand your 18 question.</p> <p>19 Q. Okay. I'll ask it a different way, --</p> <p>20 A. Okay.</p> <p>21 Q. -- see if we can get there.</p> <p>22 A. Okay.</p> <p>23 Q. You know that there are certain ways 24 that the procurement process is supposed to be 25 done; right?</p>	<p>1 Q. Break it -- 2 We're going to break it down. You 3 understand what the standard of care is; right?</p> <p>4 A. I want you not to interrupt me 5 actually, you know. So I'm listening to you and 6 I will give you my answer, the one I -- that I 7 know and the one I can recall.</p> <p>8 Q. Do you understand what the phrase 9 "standard of care" means? I think you told us 10 you do.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Yes?</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand what I'm talking 15 about when I say "this text message?"</p> <p>16 A. Yes.</p> <p>17 Q. Do you understand what I'm talking 18 about when I say "that two-dimensional video 19 that was sent of the heart in the OCS machine?"</p> <p>20 A. Yes.</p> <p>21 Q. Do you understand what I mean when I 22 say "assume that that video and this text 23 message were the only communications sent back 24 to Dr. Villavicencio?"</p> <p>25 A. I can't recall.</p>
<p>1 A. Yes.</p> <p>2 Q. Do you understand what the phrase 3 "accepted standards of medical practice" means?</p> <p>4 A. Accepted?</p> <p>5 Q. Do you understand what the phrase 6 "accepted standards of medical practice" means?</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand what the phrase 9 "standard of care" means?</p> <p>10 A. Yes.</p> <p>11 Q. Great. With that understanding, do you 12 agree that if the only communication back to Dr. 13 Villavicencio about this heart was the single 14 text message and the two-dimensional video, that 15 would not be enough to comply with the standard 16 of care?</p> <p>17 MR. BRANTINGHAM: Object to foundation.</p> <p>18 Q. Do you understand my question?</p> <p>19 A. Actually, no.</p> <p>20 Q. Okay. What part of it don't you 21 understand? Because you understand what the 22 standard of care is; right?</p> <p>23 A. I understood.</p> <p>24 Q. Great.</p> <p>25 A. You ask --</p>	<p>1 Q. That's not what I'm asking. 2 MR. BRANTINGHAM: Hold on. Let him 3 finish. We've been over this.</p> <p>4 A. You want to interrupt me more and more?</p> <p>5 Q. No. I want you to answer my question 6 because it's a simple question.</p> <p>7 MR. BRANTINGHAM: Hold on. Hold on.</p> <p>8 No. Hang on a -- this is --</p> <p>9 Let's take a minute. Okay?</p> <p>10 MR. THOMPSON: Yeah. That's fine.</p> <p>11 MR. BRANTINGHAM: Let's take a minute.</p> <p>12 THE REPORTER: Okay. Off the record.</p> <p>13 (Recess taken from 10:00 a.m to 10:11 14 a.m.)</p> <p>15 THE VIDEOGRAPHER: We're on video.</p> <p>16 THE REPORTER: We're on the record.</p> <p>17 BY MR. THOMPSON:</p> <p>18 Q. All right. Doctor, before we took a 19 break we were talking about my question about 20 the standard of care. Do you remember that?</p> <p>21 A. Yes.</p> <p>22 Q. All right. Now let me see if I can 23 frame it in a way that we can get on the same 24 page about.</p> <p>25 A. Yes.</p>

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<p>1 Q. You understand that I'm asking you a 2 hypothetical question. I think it accurately 3 represents the facts of this case, but it's a 4 hypothetical question. Do you understand that? 5 A. Yes. 6 Q. All right. Now assuming that the only 7 two communications back to Dr. Villavicencio 8 [REDACTED] 9 10 that was sent to him of the heart in the OCS 11 box, do you think that would comply with the 12 standard of care? 13 MR. BRANTINGHAM: Object to foundation. 14 Go ahead. 15 A. I mean it depends on -- on the 16 circumstances at the time of surgery, I mean 17 procurement or transplant. But I can't recall I 18 mean whether there was a phone call or not, but 19 we are sure, before leaving the donor site, that 20 a clear communication is passed to the 21 transplant surgeon. 22 Q. And in your view it would be okay for 23 it to not involve a phone call; is that true? 24 Is it your testimony that that clear 25 communication does not necessarily need to</p>	<p>1 [REDACTED] 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 include a phone call? 2 MR. BRANTINGHAM: Object to the form 3 and the foundation. 4 A. There was a clear communication between 5 the -- the transplant -- the procuring surgeons 6 and the transplant surgeon about this donor 7 heart. 8 Q. Okay. Again, not my question. You 9 keep wanting to talk about clear communication. 10 Let's do it another way. 11 A. Go ahead. 12 [REDACTED] 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 [REDACTED] 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 Q. Yeah. So here's why I'm asking these 2 questions, doctor, -- 3 A. Yes. 4 Q. -- just to make sure we're on the same 5 page here. 6 A. Yes. 7 Q. For about the last 20 minutes when I've 8 been asking you questions about the 9 communication back to Dr. Villavicencio -- 10 A. Uh-huh. 11 Q. -- and what was required by the 12 standard of care, you've really kind of danced 13 around my question about whether there needed to 14 [REDACTED] 15 [REDACTED] 16 17 18 19 20 21 22 23 24 25 [REDACTED]</p>	<p>1 document says what it says. The witness is 2 clearly having issues with how you're 3 constructing your questions. 4 MR. THOMPSON: I don't think he is at 5 all. I think he's intentionally not answering 6 my question. 7 MR. BRANTINGHAM: I don't particularly 8 care about what your opinion is about the 9 witness. 10 MR. THOMPSON: Well then don't give me 11 your opinion. Don't give me your opinion. 12 MR. BRANTINGHAM: Okay. Let -- then 13 let him ans -- 14 MR. THOMPSON: Instruct -- 15 MR. BRANTINGHAM: -- let him answer the 16 question. 17 MR. THOMPSON: -- instruct the guy to 18 answer my questions. 19 MR. BRANTINGHAM: I think I am. 20 Go ahead and answer the question as you 21 see fit, doctor. 22 A. But you don't give me the chance to 23 answer it actually. 24 MR. BRANTINGHAM: Just let him answer 25 the question.</p>
<p>1 [REDACTED] 2 [REDACTED] 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 Q. Do you want to try to tell us that this is an answer to the question? It's not an answer to the question. 21 A. You -- 22 MR. BRANTINGHAM: Here's what I'd like 23 to tell you, Brandon. We'll stipulate the 24 25</p>	<p>1 Q. You're not answering. 2 A. Please listen to me. There was a clear 3 communication regarding this donor heart with 4 the transplant surgeon between the -- the 5 procuring surgeons and the transplant surgeon. 6 Q. What was the clear communication? 7 A. There was a clear communication about 8 the heart status and the heart status on the -- 9 on the -- on the OCS machine, and there was a 10 clear communication regarding the steps -- or 11 stages of the transport all -- all through and 12 whether the heart is good or not or whether 13 any -- for any event, and that was clear. 14 Q. In what -- 15 A. That's the question you are asking me. 16 Now -- now -- 17 Q. It's not. 18 A. Let me -- let me -- let me finish. 19 A. Let me -- let me -- let me finish. 20 Now what I said to you, there was a 21 clear communication about the heart. Now I 22 can't recall at the -- all stages whether that 23 was in the phone call or video or the text, I 24 mean at each stage, but there was a clear 25 communication. That was -- that's the thing that I can attest.</p>

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<p style="text-align: center;">Page 78</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 Q. Okay. Is there a reason why you don't</p>	<p style="text-align: center;">Page 80</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>
<p style="text-align: center;">Page 79</p> <p>1 want to answer my question? 2 MR. BRANTINGHAM: You don't have to 3 answer that question. 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p style="text-align: center;">Page 81</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	[REDACTED]	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	[REDACTED]
	Page 83		Page 85
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	[REDACTED]	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	[REDACTED]

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1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]

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<p style="text-align: center;">Page 90</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 92</p> <p>1 A. That's correct. Because I'm from</p> <p>2 Jordan and I go there, and if my plan for the --</p> <p>3 I mean the future, if I reside there, you know,</p> <p>4 it's good to have, you know -- I use in my life</p> <p>5 to get all my credentials regardless if I use</p> <p>6 them or not. Getting a license does not mean</p> <p>7 that you are planning to work there. And --</p> <p>8 Q. Got it.</p> <p>9 A. -- I can give you one more. I have the</p> <p>10 membership in the Royal College of Surgeons in</p> <p>11 Ireland, but I never work there, I never visited</p> <p>12 there.</p> <p>13 Q. You passed your boards in Jordan in</p> <p>14 2007; is that right?</p> <p>15 A. I have the cardiac surgery board in</p> <p>16 2007.</p> <p>17 Q. For how long does that last?</p> <p>18 A. It's forever.</p> <p>19 Q. You never have to recertify?</p> <p>20 A. No.</p> <p>21 Q. Does that carry over to the United</p> <p>22 States, your Jordanian board certification?</p> <p>23 A. There are -- there are requirements for</p> <p>24 the license, to get me licensed here, and I</p> <p>25 applied for the license and I got my Minnesota</p>
<p style="text-align: center;">Page 91</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Q. Okay. Why did you go get your license</p> <p>22 to practice in Dubai in 2024?</p> <p>23 A. Yes.</p> <p>24 Q. My question wasn't did you. I know you</p> <p>25 did. It's on your CV. Why did you?</p>	<p style="text-align: center;">Page 93</p> <p>1 license to work here.</p> <p>2 Q. No. You understand there's a</p> <p>3 difference between being licensed to practice</p> <p>4 medicine in the United States and being board</p> <p>5 certified in a specialty in the United States;</p> <p>6 right?</p> <p>7 A. That's correct.</p> <p>8 Q. My question for you is: Does your</p> <p>9 Jordanian board certification carry over to the</p> <p>10 United States?</p> <p>11 MR. BRANTINGHAM: Object to the form.</p> <p>12 Go ahead.</p> <p>13 A. You mean equal to the American board,</p> <p>14 that's what your -- what your question, or what?</p> <p>15 Q. Yeah. Like if a patient asks you "Are</p> <p>16 you board certified?", what do you say?</p> <p>17 A. No.</p> <p>18 Q. Why do you have a license in Ohio?</p> <p>19 A. That's my answer to you, I get many of</p> <p>20 the credentials that I like to, you know,</p> <p>21 whether certification, boards. Always in my</p> <p>22 life I'm working on myself to upgrade myself.</p> <p>23 Q. Sure. Have you ever been to Ohio?</p> <p>24 A. Visiting.</p> <p>25 Q. Yeah.</p>

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<p>1 A. Not working.</p> <p>2 Q. Have you ever applied for a job in</p> <p>3 Ohio?</p> <p>4 A. Probably in the past. I can't recall</p> <p>5 where or whether in Ohio, but --</p> <p>6 Q. So your testimony is you just --</p> <p>7 because you want to improve yourself, you just</p> <p>8 randomly went out and got a medical license in</p> <p>9 the United States state of Ohio in 2018.</p> <p>10 A. Two -- 2018 and while I was in Jordan.</p> <p>11 Q. But not because you were looking to get</p> <p>12 a job there, just because you wanted to improve</p> <p>13 yourself.</p> <p>14 A. Yes.</p> <p>15 Q. What about Indiana or Wisconsin or</p> <p>16 Iowa? Are you going to get licensed in any of</p> <p>17 those places?</p> <p>18 A. Because when you apply for a license,</p> <p>19 you look for the requirements of the license.</p> <p>20 Q. Right. My question is: Ohio seems</p> <p>21 totally random unless there's some reason that</p> <p>22 you were applying there, and that's what I'm</p> <p>23 trying to figure out. If it was just because</p> <p>24 you want to improve yourself, why not some other</p> <p>25 state?</p>	<p>1 A. Uh-huh.</p> <p>2 Q. -- and you say, you know what, this --</p> <p>3 this is not a heart that we're going to</p> <p>4 transplant.</p> <p>5 A. Three to four times.</p> <p>6 Q. Now you would agree with me that</p> <p>7 sometimes a heart that looks good at the donor</p> <p>8 site may no longer be viable when you get back</p> <p>9 to the transplant institution; right?</p> <p>10 A. Say it again.</p> <p>11 Q. Sometimes a heart that looks good at</p> <p>12 the donor site ends up not being transplanted at</p> <p>13 the transplant institution; right?</p> <p>14 A. Your -- your -- your question is broad</p> <p>15 actually because --</p> <p>16 Q. It's intended to be broad.</p> <p>17 Does that ever happen --</p> <p>18 A. Because --</p> <p>19 Q. -- in your experience?</p> <p>20 A. -- there --</p> <p>21 I answered your question. We denied</p> <p>22 three to four cases roughly of heart transplant</p> <p>23 at the donor site.</p> <p>24 Q. We're talking past one another. So let</p> <p>25 me -- let me ask it a different way.</p>
<p style="text-align: center;">Page 95</p> <p>1 A. Just I choose Ohio. I mean I went one</p> <p>2 state license. That's all.</p> <p>3 Q. Okay. Have you ever gone to procure a</p> <p>4 heart and decided that, based on your global</p> <p>5 assessment, that it was not going to be suitable</p> <p>6 for transplantation?</p> <p>7 A. Yes.</p> <p>8 Q. How often has that happened in your</p> <p>9 career, best estimate?</p> <p>10 A. At the donor site you mean?</p> <p>11 Q. At --</p> <p>12 We'll talk about other times, yes. I</p> <p>13 appreciate that clarification. At the donor</p> <p>14 site.</p> <p>15 A. At the donor site, that includes at the</p> <p>16 donor and at the OCS?</p> <p>17 Q. Could -- could be an OCS heart, might</p> <p>18 not be an OCS heart.</p> <p>19 A. Yes.</p> <p>20 Q. Any heart that you're going to procure</p> <p>21 for transplant, you're at the donor site, you do</p> <p>22 your visual assessment, you palpate the vessels,</p> <p>23 you look for bruising, you look for anomalies,</p> <p>24 you look at the hemodynamics, you do all the</p> <p>25 stuff that you were doing --</p>	<p style="text-align: center;">Page 97</p> <p>1 A. Uh-huh.</p> <p>2 Q. As part of getting your OCS training</p> <p>3 and as part of procuring hearts to be placed on</p> <p>4 the OCS, I presume you familiarized yourself</p> <p>5 with the literature that involved the OCS.</p> <p>6 A. Yes.</p> <p>7 Q. So you are well aware of the PROCEED</p> <p>8 and EXPAND studies, I presume.</p> <p>9 A. Yes.</p> <p>10 Q. So you know that in those studies, one</p> <p>11 out of every five, almost, hearts that were</p> <p>12 transported on the OCS ended up not being</p> <p>13 transplanted once they -- once they got to the</p> <p>14 transplant institution; right?</p> <p>15 MR. BRANTINGHAM: Just object to</p> <p>16 foundation.</p> <p>17 A. That's what you read?</p> <p>18 Q. Well you read the studies as well as I</p> <p>19 did.</p> <p>20 A. I read and I have my own -- but to</p> <p>21 answer --</p> <p>22 MR. BRANTINGHAM: Yeah. Just go ahead</p> <p>23 and answer the question.</p> <p>24 A. You ans --</p> <p>25 To answer your question, we deny three</p>

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<p>1 to four -- three to four hearts. I'm talking 2 about hearts, not lungs. And we had the 3 experience of denying a heart from the donor 4 site and we had the chance to deny a heart after 5 putting it on the OCS machine.</p> <p>6 Q. Okay. I'm sticking now with the 7 studies about the OCS machine; okay?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Are you with me?</p> <p>10 A. I'm with you.</p> <p>11 Q. I'm not talking about your personal 12 experience. We'll talk about that in a minute. 13 I'm talking about your review of the OCS 14 studies. Are you with me?</p> <p>15 A. I'm with you.</p> <p>16 Q. When you went to procure this heart for 17 Noah Leopold, you knew that it was going to be 18 transported on the OCS; right?</p> <p>19 A. That's correct.</p> <p>20 Q. Is the fact that a heart is going to be 21 transported on the OCS something that is 22 relevant to you when deciding whether a heart is 23 suitable for transplantation? Is that one of 24 the things you take into account?</p> <p>25 A. Can you -- I can --</p>	<p>1 that are transported on the OCS that look good 2 at the donor site, and then they end up being 3 discarded without being transplanted; right?</p> <p>4 MR. BRANTINGHAM: Object to foundation.</p> <p>5 A. That's what you read.</p> <p>6 Q. That what what?</p> <p>7 A. That's what you read, I mean, and you 8 are saying it.</p> <p>9 Q. I'm asking if you read it.</p> <p>10 MR. BRANTINGHAM: What -- hang -- 11 just --</p> <p>12 This will be a lot probably smoother 13 and clearer if you want to show him whatever 14 document you're asking him about.</p> <p>15 MR. THOMPSON: Yeah. That's not what 16 we're going to do.</p> <p>17 MR. BRANTINGHAM: Well you just said 18 "you read it." What are you talking about that 19 he read?</p> <p>20 Q. I asked you before about whether you 21 read the PROCEED and EXPAND studies, and you 22 told me that you did; right?</p> <p>23 A. Right.</p> <p>24 Q. Okay. Now I'm sticking with your 25 knowledge.</p>
<p style="text-align: center;">Page 99</p> <p>1 I -- I want you to revise this -- this 2 answer, make it more clear to me.</p> <p>3 Q. I don't know how to make it any more 4 clear. When you went to procure the heart for 5 Noah Leopold, was it relevant to you that this 6 heart was going to be transported on the OCS?</p> <p>7 A. That's correct.</p> <p>8 Q. It was relevant to you?</p> <p>9 A. What do you mean by relevant? I mean 10 I'm sure it was to be on OCS, I was sure, 11 because of the distance.</p> <p>12 Q. Yep.</p> <p>13 Did that go into your analysis about 14 whether this heart was going to be suitable for 15 transplantation?</p> <p>16 A. Using the OCS you mean?</p> <p>17 Q. The fact that you were going to have to 18 transport it on the OCS.</p> <p>19 A. Yes.</p> <p>20 Q. And the -- one of the reasons for that 21 is because you know, because you read these 22 studies --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- and you trained on the OCS, you know 25 that there is a significant subset of hearts</p>	<p style="text-align: center;">Page 101</p> <p>1 A. Uh-huh.</p> <p>2 Q. Do you know that there is a significant 3 subset of hearts that are transported on OCS 4 that look good at the donor site and end up not 5 looking good once they get to the transplant 6 institution?</p> <p>7 A. Can you show me the --</p> <p>8 Q. No. I'm asking if you know that.</p> <p>9 MR. BRANTINGHAM: Just to your 10 knowledge, doctor.</p> <p>11 A. That may be, but that -- I can't 12 talk --</p> <p>13 I mean I cannot know the exact 14 percentage. You are saying significant. 15 That's -- that's something different.</p> <p>16 Q. Okay. Is it significant to you?</p> <p>17 MR. BRANTINGHAM: Hold on a second. 18 You used the word "significant" meaning a 19 significant number of hearts in those studies. 20 Now you're using the word "significant" to ask 21 him if this information he has not agreed to is 22 significant to him?</p> <p>23 Q. No. I'm asking if the number was 24 significant to you, because you told me you read 25 the studies.</p>

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<p>1 MR. BRANTINGHAM: But you haven't 2 established the number, Brandon. 3 MR. THOMPSON: I don't need to. I'm 4 asking -- he's saying he doesn't know the for- 5 sure number. 6 Q. I'm saying I don't care if you know the 7 for-sure number. Is it a number that's large 8 enough to be significant to you? Because it's 9 large enough to be significant to the people who 10 manufactured the device. 11 MR. BRANTINGHAM: Okay. 12 Q. So I'm asking if it's significant to 13 you. 14 MR. BRANTINGHAM: Okay. I -- hang on. 15 I object to the form of the question. Go ahead 16 and try to answer it if you can. 17 A. There -- 18 You read these. I read many of the 19 literature I mean when I was trained in the OCS. 20 You know, I keep updating myself. There are 21 many numbers in the studies. That's why I'm 22 telling you, you know, what do you mean by 23 "significant?" You know, you want the right 24 answer? Just ask me the specific question. 25 Q. I want your answer. I want to know if</p>	<p>1 the OR where it's gone from this is a good 2 heart, we're going to transplant, to this is not 3 a good heart and we're not going to transplant 4 it; right? 5 A. No. If that's your answer, no. 6 Q. Okay. What am I missing? 7 A. Yes. Because to be specific in your 8 question, I'm talking to you that we had the 9 experience to deny heart at the donor site. 10 That includes when we assess the heart first, we 11 say this is not suitable for the transplantation 12 upon communication with the transplant surgeon. 13 We are all in agreement. The second -- the 14 second stage that we had experience with is 15 putting the heart on the transplant -- on the -- 16 on -- the donor heart on the OCS machine, and 17 when that happened, when we see the heart, we 18 communicated with the transplant surgeon the 19 same way, the same video, that this is not -- I 20 mean that has something, you know, in the heart, 21 so we cannot, and it was denied. 22 Q. Yep. And then sometimes the lactate 23 doesn't go down en route and that's a bad sign; 24 right? 25 A. Doesn't --</p>
<p>1 it is -- if -- 2 From your recollection of the studies 3 and from your experience with OCS and from your 4 training with OCS, do you at least have a 5 general understanding that there are hearts that 6 look good at the donor site, and they end up 7 getting discarded at the transplant site? 8 MR. BRANTINGHAM: Okay. 9 Q. Do you understand that? 10 MR. BRANTINGHAM: Hang on. So that's 11 the question. 12 MR. THOMPSON: Yeah. 13 MR. BRANTINGHAM: Do you get that 14 question? 15 THE WITNESS: I get -- 16 MR. BRANTINGHAM: Just answer just that 17 question. 18 A. There are certain hearts that are 19 denied at the donor site, not transplanted, 20 after, you know, we're choosing for -- for -- I 21 mean to be procured, and then they are denied. 22 Q. Right. Because something happens en 23 route. They looked good at the donor site, 24 something happens between the time they get put 25 on the OCS machine and the time that they get to</p>	<p>1 Say your question again. 2 Q. One of the things that you're looking 3 for on the OCS is you're looking at the 4 lactates; right? 5 A. Correct. 6 Q. And what we want to see is that the 7 lactates are going down; right? 8 A. Correct. 9 Q. Sometimes they don't go down; right? 10 A. The lactate is one of the good 11 parameters to assist the heart on the OCS 12 machine. 13 Q. I understand that. 14 A. Yes. 15 Q. And sometimes -- 16 Most of the time the lactates look 17 good, and a heart that looked good at the donor 18 site, we're still going to transplant it on the 19 back end. Right? That's what happens most of 20 the time. 21 MR. BRANTINGHAM: If I can help 22 clarify, you're not asking about his experience, 23 Mayo's experience, you're asking in the universe 24 of people who have ever used OCS. Right? 25 Q. Including maybe your experience.</p>

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<p>1 MR. BRANTINGHAM: Sure.</p> <p>2 Q. I mean most of the time when you get a</p> <p>3 heart and you put it on OCS, it does get</p> <p>4 transplanted at Mayo; right?</p> <p>5 Let me ask it a different way.</p> <p>6 A. Yes.</p> <p>7 Q. In 2022 you estimated that you did ten</p> <p>8 OCS heart cases; right?</p> <p>9 A. An estimate.</p> <p>10 Q. Okay.</p> <p>11 A. A rough estimate to say.</p> <p>12 Q. Were any of those hearts rejected once</p> <p>13 they got to Mayo?</p> <p>14 A. I can't remember any one.</p> <p>15 Q. In 2023 you estimated somewhere between</p> <p>16 12 to 15 OCS hearts. Were any of them rejected</p> <p>17 once they got to Mayo?</p> <p>18 A. I can't remember any case.</p> <p>19 Q. This year, approximately eight OCS</p> <p>20 hearts. Were any of them rejected once you got</p> <p>21 to Mayo?</p> <p>22 A. There was one case was turned down at</p> <p>23 the donor site.</p> <p>24 Q. Wasn't my question. We got to stick</p> <p>25 with my question.</p>	<p>1 we -- you know, when we got our training, and I</p> <p>2 keep updating about myself.</p> <p>3 Q. My question was: When's the last time</p> <p>4 you think you looked at it?</p> <p>5 A. I --</p> <p>6 I'm working on myself. I get updated</p> <p>7 in many aspects of this. And --</p> <p>8 Q. I'm talking about one specific</p> <p>9 aspect, --</p> <p>10 A. And --</p> <p>11 Q. -- this manual. When do you think the</p> <p>12 last time is that you looked at it?</p> <p>13 A. The resources are so many in our</p> <p>14 medicine. We are having many resources and many</p> <p>15 articles that I keep all the time updating</p> <p>16 myself. But I can't recall, as per your</p> <p>17 question, I can't recall exactly the time that I</p> <p>18 read this document the last time.</p> <p>19 Q. Do you have any recollection whatsoever</p> <p>20 about what the warnings are that the</p> <p>21 manufacturer puts in this manual?</p> <p>22 A. Yeah. I --</p> <p>23 There are -- there are certain --</p> <p>24 certain parameters that we are, you know -- we</p> <p>25 get -- we get to know that we are in the normal</p>
<p>1 A. On the OCS machine.</p> <p>2 Q. Yep.</p> <p>3 I'm asking if any of those eight got --</p> <p>4 that got put on the OCS, we brought them all the</p> <p>5 way to Rochester, and then once they got here we</p> <p>6 decided, you know what, we thought this was</p> <p>7 going to work, but it's not going to work. That</p> <p>8 hasn't happened to your recollection.</p> <p>9 A. I can't recall any one.</p> <p>10 Q. Fair enough.</p> <p>11 But you know, because you read the</p> <p>12 studies, --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- that 20 percent of the time in the</p> <p>15 studies that did happen; right?</p> <p>16 A. There are many studies, many studies</p> <p>17 now. The literature is full of studies with --</p> <p>18 Q. Stick with EXPAND.</p> <p>19 A. -- with different numbers.</p> <p>20 Q. Have you ever read or even looked at</p> <p>21 the TransMedics OCS Heart User Guide?</p> <p>22 A. Of course.</p> <p>23 Q. When is the last time you think you</p> <p>24 looked at it?</p> <p>25 A. Yeah. I looked at that, you know --</p>	<p>1 ranges.</p> <p>2 Q. Wasn't my question.</p> <p>3 My question was: There's a section in</p> <p>4 this manual, Section 1.5 that's in nice bold</p> <p>5 letters, and the top of it says "Warnings." Do</p> <p>6 you have any clue as you sit here today what</p> <p>7 those warnings are?</p> <p>8 A. I'm reading a lot of articles, so you</p> <p>9 are asking me about a sentence written in -- in</p> <p>10 bold. But if you want to -- if you want to show</p> <p>11 it to me I can, you know, tell you, but I</p> <p>12 read -- I'm daily reading.</p> <p>13 Q. My question -- I think you're answering</p> <p>14 it, just in a roundabout way. My question is:</p> <p>15 As you sit here today, do you have any clue what</p> <p>16 warnings the manufacturer of this device that</p> <p>17 you are using dozens of times puts out there?</p> <p>18 MR. BRANTINGHAM: Object to the form of</p> <p>19 the question. Go ahead, doctor. I think you</p> <p>20 did answer it.</p> <p>21 A. Yes. I'm aware of the -- of the</p> <p>22 certain things that are alarming to me and this</p> <p>23 machine are -- are the readings, you know, that</p> <p>24 I should pay attention to that, if that's the</p> <p>25 thing -- the answer for your question.</p>

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<p>1 Q. Okay. So your answer is you -- you 2 don't know with any specificity what the 3 warnings are.</p> <p>4 A. I know the warnings of the heart. I'm 5 aware of the -- of this machine, you know.</p> <p>6 Q. You're aware of the warnings of the 7 heart and you're aware of this machine. What 8 warnings --</p> <p>9 A. The heart --</p> <p>10 Q. Hold on.</p> <p>11 MR. BRANTINGHAM: Just --</p> <p>12 Q. You got to --</p> <p>13 You answered, and now I got to ask you 14 a follow-up question.</p> <p>15 MR. BRANTINGHAM: Wait for a real 16 question.</p> <p>17 Q. What warnings of the heart are you 18 talking about?</p> <p>19 A. On the machine or where?</p> <p>20 Q. You said "I'm aware of the warnings of 21 the heart." What did you mean when you said 22 that?</p> <p>23 A. Yeah. Because you keep inter -- 24 interrupting me. You are asking me about the 25 machine, the warnings on the -- on the machine.</p>	<p>1 Q. Sure. For example, the lactate may 2 change. That's why somebody's supposed to be 3 looking at the lactate every 15 to 30 minutes; 4 right?</p> <p>5 MR. BRANTINGHAM: Object to the form, 6 compound.</p> <p>7 A. These numbers, you know, give an 8 assessment and -- and -- you know, about the 9 heart, you know, function on the OCS machine.</p> <p>10 Q. I understand that.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And they can change as the run goes on; 13 right?</p> <p>14 A. Yes.</p> <p>15 Q. That is why the lactates are supposed 16 to be periodically sequentially drawn; right?</p> <p>17 A. Correct.</p> <p>18 Q. Now the flow pressures can also change; 19 right?</p> <p>20 A. Correct.</p> <p>21 Q. That is why there is a readout that 22 shows what the flow pressures are; right?</p> <p>23 A. Correct.</p> <p>24 Q. Right. Somebody's got to be actually 25 looking at that stuff and doing an ongoing</p>
<p>1 Right? And I'm answering you, but you keep 2 interrupting me. I'm aware of the warnings of 3 the machine and the heart being on the machine. 4 That's my question to you -- that's my answer to 5 your question.</p> <p>6 Q. Okay. What warnings are you aware of?</p> <p>7 A. Yes. So first, you know, the numbers, 8 the numbers that we are having and the 9 parameters.</p> <p>10 Q. What numbers and what parameters are 11 you talking about?</p> <p>12 A. Yes. The coronary perfusion, the 13 aortic pressure, the lactate levels, the 14 arterial blood gases, the visual assessment of 15 the heart.</p> <p>16 Q. All of those things are important; 17 right?</p> <p>18 A. Yes.</p> <p>19 Q. All of those things are an important 20 part of assessing whether the heart is suitable 21 for transplantation; right?</p> <p>22 A. Correct.</p> <p>23 Q. And those things can and do change 24 during the entire OCS run; right?</p> <p>25 A. They may change.</p>	<p>1 assessment of the heart; right?</p> <p>2 A. Right.</p> <p>3 MR. BRANTINGHAM: Object to the form.</p> <p>4 Q. Go ahead.</p> <p>5 A. These --</p> <p>6 I mean these numbers, you know, there 7 is -- they are sequentially measured. And for 8 this particular donor, all the flows and the 9 numbers were within the normal ranges.</p> <p>10 Q. We're going to get to -- we're going to 11 get to the -- what actually happened in this 12 case. Right now I'm just talking about general 13 concepts.</p> <p>14 One of the other general concepts is 15 that the function of the heart can change over 16 time; right?</p> <p>17 A. It may.</p> <p>18 Q. I mean the reason it's in a clear box 19 is so that somebody can look at it; right?</p> <p>20 MR. BRANTINGHAM: Object to foundation.</p> <p>21 Q. Didn't they tell you in your 22 TransMedics training that the reason this thing 23 is in a clear box is so that an ongoing visual 24 assessment can be performed?</p> <p>25 A. Yes.</p>

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<p>1 Q. Thank you.</p> <p>2 A. I can --</p> <p>3 MR. BRANTINGHAM: Just ans -- yes.</p> <p>4 That's good.</p> <p>5 A. I want to --</p> <p>6 MR. BRANTINGHAM: That's the answer,</p> <p>7 yes.</p> <p>8 Q. Nope. You've answered my question.</p> <p>9 Yes, they did tell you that the reason that this</p> <p>10 thing is in a clear box is so an ongoing visual</p> <p>11 assessment can be performed.</p> <p>12 Did they tell you in your TransMedics</p> <p>13 training that is an import -- it is important to</p> <p>14 actually conduct that ongoing visual assessment?</p> <p>15 A. You mean this every time?</p> <p>16 Q. Every time a heart is on the OCS --</p> <p>17 A. Yeah.</p> <p>18 Q. -- somebody should be looking at it to</p> <p>19 see if it still looks like it's functioning</p> <p>20 well; right?</p> <p>21 A. Yes.</p> <p>22 Q. Yeah. That's an important part of the</p> <p>23 ongoing assessment of the heart; right?</p> <p>24 A. Uh-huh. Right.</p> <p>25 Q. Because if the heart looked like it was</p>	<p>1 sure that I'm getting this right.</p> <p>2 A. Yeah. We don't, you know. I can't</p> <p>3 recall --</p> <p>4 You know, the reason why I'm thinking,</p> <p>5 because I can't recall if that -- there was</p> <p>6 internet coverage in that airplane.</p> <p>7 Q. Uh-huh.</p> <p>8 A. But if there is no internet</p> <p>9 coverage, --</p> <p>10 Q. Uh-huh.</p> <p>11 A. -- there is no to communicate -- no way</p> <p>12 in the airplane, I mean.</p> <p>13 Q. Got it. I mean --</p> <p>14 Okay. I mean presumably you've flown</p> <p>15 commercial plenty; right?</p> <p>16 MR. BRANTINGHAM: I think we'll</p> <p>17 stipulate you can get Wi-Fi on those commercial</p> <p>18 flights, if that's where you're going with it,</p> <p>19 Brandon.</p> <p>20 Q. Yeah. But -- but you don't --</p> <p>21 I mean you don't know whether you can</p> <p>22 communicate? What if -- what if something</p> <p>23 really catastrophic happens with the heart while</p> <p>24 you're in the air, the OCS machine stops</p> <p>25 working, for example, are you telling me there's</p>
<p style="text-align: center;">Page 115</p> <p>1 really beating strong at the donor site and when</p> <p>2 you put it on the OCS machine, but if now we're</p> <p>3 an hour and a half into the flight and the</p> <p>4 thing's not looking so good, --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- that's important; isn't it?</p> <p>7 A. It's important. Of course.</p> <p>8 Q. And if that happens, somebody should be</p> <p>9 picking up the phone and communicating that back</p> <p>10 to the transplant surgeon; right?</p> <p>11 MR. BRANTINGHAM: Just object to form.</p> <p>12 A. It depends where you are. You are</p> <p>13 talking in the airplane?</p> <p>14 Q. Yeah. Do you not have the ability to</p> <p>15 communicate back with Mayo while you're on the</p> <p>16 plane?</p> <p>17 A. Actually, no. There is no --</p> <p>18 Q. Really. You have no ability to</p> <p>19 communicate back with Mayo while you're on this</p> <p>20 plane.</p> <p>21 MR. BRANTINGHAM: Asked and answered.</p> <p>22 Go ahead, you can answer again.</p> <p>23 Q. I mean I am --</p> <p>24 A. I have --</p> <p>25 Q. Pardon my shock, but I want to make</p>	<p style="text-align: center;">Page 117</p> <p>1 no way to communicate back to the transplant</p> <p>2 team and tell them that?</p> <p>3 MR. BRANTINGHAM: Hang on one second.</p> <p>4 Object to the form of that question, I think</p> <p>5 it's been asked now a couple of times. Go</p> <p>6 ahead.</p> <p>7 A. I can't recall if that airplane had an</p> <p>8 internet or not. I can't recall if there was a</p> <p>9 communication in the airplane, that's the second</p> <p>10 thing. That's -- that's my question -- my</p> <p>11 answer to you.</p> <p>12 Q. When is the last time you went on an</p> <p>13 OCS run?</p> <p>14 A. Two weeks.</p> <p>15 Q. Was there Wi-Fi on that plane?</p> <p>16 A. No.</p> <p>17 Q. So presumably then what you're telling</p> <p>18 me is if something bad happens with the heart</p> <p>19 while it's on the airplane, we may have to wait</p> <p>20 until we're on the ground to communicate that</p> <p>21 back to the transplant team.</p> <p>22 A. If there is no internet, that's</p> <p>23 correct.</p> <p>24 Q. Yeah. Okay.</p> <p>25 Can you and I agree that if the heart</p>

30 (Pages 114 to 117)

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<p>1 function changes during the flight, looked good 2 at the donor site but, boy, while we were en 3 route it actually wasn't looking as good as it 4 did at the donor site, that's an important piece 5 of information to communicate to the transplant 6 team?</p> <p>7 MR. BRANTINGHAM: Object to the form.</p> <p>8 A. That donor? We --</p> <p>9 Q. I'm not asking about a specific donor.</p> <p>10 A. We did not have any event.</p> <p>11 Q. Oh, we're going to talk about that. 12 Don't worry about that.</p> <p>13 A. Yeah.</p> <p>14 Q. I'm talking about in general.</p> <p>15 A. Yeah.</p> <p>16 Q. Yeah. We're going to get into what you 17 saw in that airplane.</p> <p>18 A. Because --</p> <p>19 Q. We're talking -- hold on. My question 20 is general.</p> <p>21 Can't you as a cardiothoracic surgeon 22 agree with me that if the heart function looks 23 really good and strong and robust at the donor 24 site, but while you're en route it looks less 25 robust and it isn't beating as strong, that is</p>	<p>1 A. That didn't happen. 2 Q. We're going to talk about that. Don't 3 worry.</p> <p>4 A. Uh-huh. 5 Q. I'm talking about in general.</p> <p>6 MR. BRANTINGHAM: He's asking a 7 hypothetical. That's just --</p> <p>8 A. Yeah. As a general information, if you are asking a hypothetical thing, yeah, this -- I mean once we are touching in the nearest airport to the hospital, you know, if there is any event with -- with -- with the donor, with the -- with the organ, whatever, you know, a heart or lung, we communicate that with the -- with the surgeon.</p> <p>16 Q. I'm not just talking about any event. 17 I'm talking about a specific event, --</p> <p>18 A. At -- 19 Q. -- and that -- and that would be the 20 heart -- overall heart function looks like it's 21 not as strong and robust as it was when we took 22 off.</p> <p>23 A. And -- 24 MR. BRANTINGHAM: Object to the form of 25 the question and foundation.</p>
<p style="text-align: center;">Page 119</p> <p>1 an important piece of information that needs to 2 be communicated to the transplant surgeon?</p> <p>3 MR. BRANTINGHAM: You mean when he 4 can't communicate it in flight or after?</p> <p>5 Q. Once you land.</p> <p>6 MR. BRANTINGHAM: Okay. So he's asking 7 once you land, is it important to communicate to 8 the surgeon what he just said.</p> <p>9 A. Of course the surgeon is aware that we are landing and if there is anything.</p> <p>11 Q. You're not listening to me.</p> <p>12 A. Of course.</p> <p>13 Q. No, no. I know the surgeon knows when 14 you land. I didn't ask you whether you need to 15 tell the surgeon when you land. Stick with me. 16 Hold on. Stick with me, because I want to make 17 sure we're on the same page about this.</p> <p>18 A. Uh-huh.</p> <p>19 Q. To you, as a cardiothoracic surgeon, 20 would it be relevant to know that a heart that 21 was beating really strongly when you took off in 22 Idaho wasn't beating so strongly when you landed 23 in Rochester? Would that be important?</p> <p>24 A. You're talking about this donor.</p> <p>25 Q. No. I'm asking you a gen --</p>	<p style="text-align: center;">Page 121</p> <p>1 So he's asking a more specific question 2 now based on the description he just gave you of 3 what might happen to a heart, and it's 4 hypothetical. If you're able, go ahead.</p> <p>5 A. If there is any event, that includes, you know, happened in the airplane, we will pass it after we land, you know, whenever we have the chance to communicate with the surgeon.</p> <p>9 Q. Did you know that in the PROCEED study 10 overall survivor was -- survival was lower in 11 patients transplanted with the OCS system 12 compared to patients transplanted with standard 13 cold preservation?</p> <p>14 A. Yes, I know.</p> <p>15 Q. You're aware of that.</p> <p>16 A. Yes.</p> <p>17 Q. Is that a relevant piece of information 18 to you as the procurement surgeon?</p> <p>19 A. Yes.</p> <p>20 Q. Did you know that in the PROCEED and 21 the EXPAND studies there was pathologic evidence 22 of myocardial injury with hearts that were 23 preserved on the OCS system and nobody knows for 24 sure why that happened?</p> <p>25 A. That's what the study said.</p>

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<p>1 Q. Yep. Do you have any reason to dispute 2 that?</p> <p>3 A. I have no.</p> <p>4 Q. Do you have any theories as to why some 5 hearts that are transported on the OCS system 6 suffer myocardial damage while they're on the 7 system?</p> <p>8 MR. BRANTINGHAM: Foundation.</p> <p>9 A. I -- I have no explanation.</p> <p>10 Q. You don't have a clue. You just know 11 it happens, but you don't know why.</p> <p>12 A. No. That's --</p> <p>13 That there are certain things that 14 happen that, still now, I mean the literature 15 don't have explanation. But I have a lot of, 16 you know, of -- of information about this. You 17 know, I'm at Mayo, so we are -- we are -- you 18 know, we know a lot about these -- this machine 19 and how, you know, to run the heart on it --</p> <p>20 Q. Uh-huh.</p> <p>21 A. -- and how to choose the heart. Yeah.</p> <p>22 Q. Uh-huh. Uh-huh.</p> <p>23 Is it part of your practice, when 24 you're reviewing the UNOS records, to look at 25 the donor's social and medical history?</p>	<p>1 Q. Is the phrase -- 2 Does the phrase "marginal heart" mean 3 anything to you as a cardiothoracic surgeon?</p> <p>4 A. Yes.</p> <p>5 Q. Is that kind of a term of art?</p> <p>6 A. What?</p> <p>7 Q. Is that a term of art for cardiac 8 surgeons?</p> <p>9 A. What do you mean heart -- art or heart?</p> <p>10 Q. Term of art. Do you know that phrase?</p> <p>11 A. No.</p> <p>12 Q. Okay. Is "marginal heart" a phrase 13 that cardiac surgeons use?</p> <p>14 A. Marginal, yes.</p> <p>15 Q. Yes. Okay.</p> <p>16 What does it mean to you?</p> <p>17 A. Means to me that it's not the optimum 18 thing or the very excellent thing.</p> <p>19 Q. So a marginal heart, in your 20 definition, would be not optimal, not excellent.</p> <p>21 A. No, not the very excellent.</p> <p>22 Q. Not very excellent. Got it.</p> <p>23 Okay. When you reviewed the UNOS 24 records for the donor in this case -- now we're 25 going to talk about this case -- did you have</p>
<p style="text-align: center;">Page 123</p> <p>1 A. Yes.</p> <p>2 Q. Why?</p> <p>3 A. We review every aspect that's written 4 or documented in the UNOS.</p> <p>5 Q. Is the medical--</p> <p>6 A. Because I believe --</p> <p>7 Q. Go ahead. I didn't mean to cut you 8 off. Go ahead.</p> <p>9 A. Yeah. Because when we go there we try 10 to get most of the information relevant to the 11 donor site, to the donor patient.</p> <p>12 Q. There are certain things about a 13 patient's medical or social history that can 14 make their heart riskier than others; right?</p> <p>15 A. Like what?</p> <p>16 Q. Well we'll get into the specifics. I 17 at least want a general agreement that, yeah, 18 there are things that can make a heart riskier.</p> <p>19 A. In I mean the whole picture, you know, 20 there are -- all the circumstances of the donor 21 are important to us.</p> <p>22 Q. Uh-huh. Uh-huh.</p> <p>23 A. We know --</p> <p>24 You know, we should know everything, 25 you know, that we can -- we can know.</p>	<p style="text-align: center;">Page 125</p> <p>1 any estimate whatsoever about what size that 2 donor heart was going to be?</p> <p>3 A. Size of what? I mean size of the --</p> <p>4 Q. Size of the heart.</p> <p>5 A. Yeah. It was -- it was okay. It 6 was -- it was good.</p> <p>7 Q. When you looked at the UNOS records, 8 did you have an estimate of what the size was 9 going to be was my question.</p> <p>10 A. Yes.</p> <p>11 Q. We're not even getting to the visual 12 inspection yet.</p> <p>13 A. Yes.</p> <p>14 Q. We'll get to that in a minute. You're 15 still in Rochester.</p> <p>16 A. Yes, still in Rochester.</p> <p>17 Q. Yep. You look at the UNOS records.</p> <p>18 A. Yes, we look at the UNOS records. You 19 know, echo and -- echocardiogram and 20 catheterization as well as all the other 21 measures that we looked at, I mean the whole 22 document in the UNOS, this donor was an 23 excellent donor to get.</p> <p>24 Q. None of that was my question though. 25 My question was very specifically limited to</p>

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<p>1 size.</p> <p>2 Did you have any estimate as to what</p> <p>3 size that donor heart was going to be before you</p> <p>4 left Rochester?</p> <p>5 A. What do you mean by size? I mean --</p> <p>6 you mean echo measurements? Because that's --</p> <p>7 that's a vague question to me actually.</p> <p>8 Q. Okay. I guess I wasn't expecting that.</p> <p>9 Is any aspect of heart size relevant to</p> <p>10 the question of whether it's suitable for</p> <p>11 transplantation?</p> <p>12 A. Yes, of course.</p> <p>13 Q. What aspect of it is relevant?</p> <p>14 A. Yes. The echo measurements of the --</p> <p>15 of that heart.</p> <p>16 Q. Of the dimensions.</p> <p>17 A. Dimensions are one of them.</p> <p>18 Q. Yep. Okay.</p> <p>19 Did you have a clue what size this</p> <p>20 heart was?</p> <p>21 A. I can't recall exactly the numbers, but</p> <p>22 they were within the, you know, range of our</p> <p>23 acceptability for this -- for this recipient.</p> <p>24 Q. And the reason you knew that is because</p> <p>25 the transplant committee had decided that, not</p>	<p>1 A. Uh-huh. Yes.</p> <p>2 Q. Yeah? I mean you can't put like the</p> <p>3 heart of a four-year-old in the heart of a</p> <p>4 300-pound guy; right?</p> <p>5 A. Right.</p> <p>6 Q. Right. And on the other side of the</p> <p>7 spectrum, you got to make sure the heart's not</p> <p>8 too big, because if the donor heart is too big,</p> <p>9 you're not going to be able to make it fit in</p> <p>10 the recipient's chest cavity; right?</p> <p>11 A. Correct.</p> <p>12 Q. All right. So because of that, there</p> <p>13 are parameters for a heart that's too undersized</p> <p>14 or a heart that's too oversized; right?</p> <p>15 A. Right.</p> <p>16 Q. What are those parameters in your view?</p> <p>17 A. Yes. So this -- this donor was</p> <p>18 selected --</p> <p>19 Q. I'm not talking about this donor.</p> <p>20 General parameters for how undersized or</p> <p>21 oversized a heart can be and still fall within</p> <p>22 the acceptable range.</p> <p>23 A. That depends on each, you know,</p> <p>24 circumstance of the donor and recipient.</p> <p>25 Q. Are you telling me there's not a</p>
<p style="text-align: center;">Page 127</p> <p>1 because you did anything to independently verify</p> <p>2 that; right?</p> <p>3 A. Of course the transplant committee I</p> <p>4 mean chose this, but I looked at that, you know,</p> <p>5 and my opinion was in agreement with their --</p> <p>6 with their opinion.</p> <p>7 Q. Okay. How -- how was Noah's heart size</p> <p>8 estimated?</p> <p>9 MR. BRANTINGHAM: Object to foundation.</p> <p>10 Q. Well let me -- let me ask a broader</p> <p>11 question.</p> <p>12 A. You're asking --</p> <p>13 Q. In order --</p> <p>14 A. Because you are mixing the donor --</p> <p>15 MR. BRANTINGHAM: Just let him -- just</p> <p>16 let him ask a better question.</p> <p>17 Q. Yeah. In order to figure out whether a</p> <p>18 donor heart is a size match for the recipient,</p> <p>19 you got to have at least an estimate of how big</p> <p>20 the recipient's heart is; right?</p> <p>21 A. Right.</p> <p>22 Q. Right. Because you want to make sure</p> <p>23 that the heart that you're going to transplant</p> <p>24 is big enough that it is going to be able to</p> <p>25 actually run the recipient's body; right?</p>	<p style="text-align: center;">Page 129</p> <p>1 generally-accepted percentage?</p> <p>2 A. There are -- there are, you know,</p> <p>3 certain per -- you know, percentages and number,</p> <p>4 but each recipient and each donor is having</p> <p>5 different circumstances.</p> <p>6 Q. Okay. So specifically then for Mr.</p> <p>7 Leopold, how was it determined what an</p> <p>8 appropriate size heart would be for him?</p> <p>9 A. That -- that was, you know, the</p> <p>10 selection committee, you know. They, you know,</p> <p>11 they chose this donor for this recipient.</p> <p>12 Q. So is the answer to my question: I</p> <p>13 actually, Dr. Altar --</p> <p>14 How do you pronounce your last name?</p> <p>15 A. Altarabsheh.</p> <p>16 Q. Altarabsheh.</p> <p>17 -- I, Dr. Altarabsheh, actually have no</p> <p>18 idea how the selection committee went about</p> <p>19 determining that this was a proper size?</p> <p>20 A. That --</p> <p>21 MR. BRANTINGHAM: Object to the form of</p> <p>22 the question. Go ahead.</p> <p>23 A. That's totally incorrect.</p> <p>24 Q. Then tell me --</p> <p>25 Don't -- don't tell me the selection</p>

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<p>1 committee did it then if --</p> <p>2 A. Don't interrupt me.</p> <p>3 MR. BRANTINGHAM: Hold on, hold on,</p> <p>4 hold on, hold on.</p> <p>5 MR. THOMPSON: Hold on.</p> <p>6 MR. BRANTINGHAM: Just ask a</p> <p>7 question --</p> <p>8 MR. THOMPSON: I am.</p> <p>9 MR. BRANTINGHAM: -- and then let him</p> <p>10 answer it.</p> <p>11 MR. THOMPSON: I am.</p> <p>12 MR. BRANTINGHAM: Okay. Go. Hold on,</p> <p>13 doctor. Go ahead with your question.</p> <p>14 Q. How did the decision get made for Mr.</p> <p>15 Leopold that this heart was going to be an</p> <p>16 appropriate size? Because when I asked you that</p> <p>17 before you --</p> <p>18 MR. BRANTINGHAM: No, no, no, no. Just</p> <p>19 ask the question, Brandon.</p> <p>20 MR. THOMPSON: Don't interrupt me.</p> <p>21 Don't inter -- I'll ask --</p> <p>22 MR. BRANTINGHAM: Don't badger the</p> <p>23 witness, Brandon.</p> <p>24 MR. THOMPSON: I will ask the questions</p> <p>25 how I want to ask the questions. I don't need</p>	<p>1 MR. THOMPSON: Okay.</p> <p>2 MR. BRANTINGHAM: -- and upbraided him</p> <p>3 with your dissatisfaction with his prior answer.</p> <p>4 Just ask the question, let him answer.</p> <p>5 MR. THOMPSON: What part of "I don't</p> <p>6 need your advice about how to ask questions" are</p> <p>7 we not clicking on here?</p> <p>8 MR. BRANTINGHAM: Oh, I understand what</p> <p>9 you're saying.</p> <p>10 MR. THOMPSON: Right.</p> <p>11 MR. BRANTINGHAM: I don't care.</p> <p>12 MR. THOMPSON: Perfect.</p> <p>13 MR. BRANTINGHAM: Because I'm going to</p> <p>14 make my objections, and if you're going to abuse</p> <p>15 witnesses --</p> <p>16 MR. THOMPSON: Then make an objection.</p> <p>17 You're not making objection. You're telling me</p> <p>18 how to ask questions. That's not an objection.</p> <p>19 MR. BRANTINGHAM: I'm --</p> <p>20 Actually, Brandon, I'm telling you you</p> <p>21 didn't ask a question.</p> <p>22 MR. THOMPSON: I did.</p> <p>23 MR. BRANTINGHAM: You asked a</p> <p>24 legitimate question, you then followed it with a</p> <p>25 speech which is meant to intimidate, influence,</p>
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<p>1 your instruction or advice as to how I'm going</p> <p>2 to conduct the deposition. Your job is to sit</p> <p>3 there and make objections. And if you think</p> <p>4 that I'm so far out of line that we need to</p> <p>5 terminate the deposition, that is your remedy.</p> <p>6 Your remedy is not -- your remedy is not to tell</p> <p>7 me how you think I should be asking questions.</p> <p>8 So please --</p> <p>9 MR. BRANTINGHAM: I'm well aware of my</p> <p>10 remedies.</p> <p>11 MR. THOMPSON: Then great. Please stop</p> <p>12 interrupting me and let me ask my questions.</p> <p>13 MR. BRANTINGHAM: Please ask questions,</p> <p>14 and when you ask a question, don't follow it</p> <p>15 with shouting at the witness about your</p> <p>16 dissatisfaction with his prior --</p> <p>17 MR. THOMPSON: We -- we have a video.</p> <p>18 If -- if --</p> <p>19 MR. BRANTINGHAM: We do.</p> <p>20 MR. THOMPSON: -- you think I'm</p> <p>21 shouting and you think that it's so far out of</p> <p>22 line you need to terminate the deposition, do</p> <p>23 it.</p> <p>24 MR. BRANTINGHAM: I think you just</p> <p>25 asked a question and then you followed it and --</p>	<p>1 manipulate the witness. Just ask a question and</p> <p>2 you'll get an answer.</p> <p>3 MR. THOMPSON: Are you finished?</p> <p>4 MR. BRANTINGHAM: Just ask a question.</p> <p>5 MR. THOMPSON: Are you finished?</p> <p>6 MR. BRANTINGHAM: I am now finished.</p> <p>7 MR. THOMPSON: Great.</p> <p>8 MR. BRANTINGHAM: Please ask your</p> <p>9 question.</p> <p>10 BY MR. THOMPSON:</p> <p>11 Q. My question is: How did it come --</p> <p>12 How was it decided that this heart was</p> <p>13 going to be an appropriate size for Mr. Leopold?</p> <p>14 And don't tell me that that was the selection</p> <p>15 committee's decision, because I want to know</p> <p>16 what your knowledge is about how that decision</p> <p>17 was made.</p> <p>18 A. You --</p> <p>19 MR. BRANTINGHAM: Object to the form of</p> <p>20 the question. Go ahead and answer if you're</p> <p>21 able.</p> <p>22 A. You finished your --</p> <p>23 You are assuming. We are in front of</p> <p>24 the cameras. You are assuming an answer that I</p> <p>25 did not make.</p>

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<p>1 Q. Great. Then give me an answer. 2 A. You are asking -- you are asking about 3 the general rules of the size matching between 4 recipients and donors. 5 Q. No, that was five minutes ago. 6 A. And now -- 7 Don't interrupt me, please, for the -- 8 you know, I'm telling you, -- 9 Q. Just answer my question. 10 A. -- don't -- 11 MR. BRANTINGHAM: Hold on. Hold on. 12 Just stop here. Hold on. 13 Q. You're not answering my question. 14 MR. BRANTINGHAM: Hold on. 15 Q. Now you're giving a speech. 16 MR. BRANTINGHAM: Hold on. 17 Q. Answer my questions. 18 MR. THOMPSON: And this is my dep -- 19 I get to run the deposition. When you 20 take depositions, you can run the deposition 21 however you like. If I think this witness is 22 not answering my questions, I'm well within my 23 right to interrupt him and redirect him to the 24 question that I'm asking. And if you -- and 25 if --</p>	<p>1 looked to the data of that donor and I was in 2 agreement with this -- with this selection. 3 Q. Okay. Do you have any clue how the 4 selection committee made that decision? 5 MR. BRANTINGHAM: He's just asking if 6 you know how the committee made the decision, 7 doctor. 8 A. They're having their -- their, you 9 know, parameters, you know, and making, you 10 know, the multiple factors, you know, for the 11 recipient and the donors and they choose 12 accordingly. 13 Q. Got it. 14 Okay. Do you know what those 15 parameters were that the donor committee -- or 16 the selection committee was using? 17 A. I know for myself, but you can reach 18 out to the selection committee and ask them 19 these questions. 20 Q. Nope. I'm asking what your knowledge 21 is. So your answer is: No, I don't know what 22 parameters the selection committee used. 23 A. This is not my answer. 24 Q. Great. Okay. Then what is your 25 answer?</p>
<p>1 Again, if you think I'm abusing him to 2 the point that we need to terminate the 3 deposition, do it. That's your remedy. 4 Q. But you got to answer my questions. 5 The question before you has absolutely nothing 6 to do with general parameters. That was five 7 minutes ago. The question before you is really 8 simple, and I'll ask it again. 9 The question is: If you know, how was 10 the decision made that this donor heart was an 11 appropriate size for Noah Leopold? 12 MR. BRANTINGHAM: You can go ahead and 13 answer. And the question is if you know. If 14 you know. 15 A. Did you say "inappropriate" or 16 "appropriate?" 17 Q. Appropriate. 18 A. Oh, okay. That was the selection 19 committee selecting the donors for -- for our 20 recipients. 21 Q. Is that your complete answer to my 22 question? 23 A. Can -- can I make sure that your 24 question is totally? Because that was the 25 decision of the selection committee, and I</p>	<p>1 A. I know -- I know, you know, a lot of, 2 you know, information in my -- in my -- you 3 know, I'm in the medical field, I know. But 4 they are, you know, they're specialized in this. 5 Q. Right. So I'll return -- 6 MR. BRANTINGHAM: Same objection. 7 Q. -- I'll return back to my question. 8 Do you know what parameters the 9 selection committee used? 10 A. They are using many parameters. 11 Q. Great. Do you know any of them? 12 A. Yes. 13 Q. What? 14 A. From a blood group, size match. 15 Q. Blood -- 16 A. Yeah. 17 Q. I'm talking about the size. We're just 18 talking about the size. 19 A. The size match between the recipient 20 and the donor, heart size, ventricular 21 diameters, you know, many of the things -- the 22 things that I know, but they are the best to 23 judge the, you know, the most suitable donor for 24 the recipient -- for that recipient. 25 Q. You're speaking in big-time</p>
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<p>1 generalities here and we're going to be 2 specific. Do you -- 3 So you've said heart size and then 4 ventricular diameter were two of the parameters 5 that you think the selection committee looks at; 6 right? 7 A. They are looking on a lot of factors 8 relevant to the recipient and the -- and the 9 donor. 10 Q. I'm sure they are. I'm trying to 11 figure out what knowledge you have of those 12 factors other than just there's lots of factors 13 and I rely on them to figure it out. And if 14 that's your answer, that's cool. 15 A. No, that's not my answer. 16 Q. Great. 17 A. Don't assume my answers. 18 Q. Great. Well then let's talk about it. 19 What specifically are the parameters 20 that the selection committee used to decide this 21 was an appropriately-sized heart for Noah 22 Leopold? 23 A. Yes. There are many parameters that 24 they consider. That's -- 25 Q. Such as?</p>	<p>1 know, I was fine with that -- with that donor 2 for myself. I didn't see anything. 3 Q. Are you finished? 4 A. Yes. 5 Q. I'm still waiting for the specific 6 parameters because you haven't given me one 7 single one. 8 A. You can ask them for the details, 9 because you are asking for the exact -- you 10 know, for all the parameters and there are many 11 parameters. 12 Q. I'm just -- 13 How about just one? 14 A. I'm giving you. 15 Q. What? 16 A. The ventricular size. 17 Q. Of the donor or the recipient? 18 A. There should be matching between the 19 two. 20 Q. They should be, you're right. 21 Any other parameters that you can think 22 of? 23 A. But I'm telling you you can ask the 24 selection committee for all the parameters and 25 I'm sure they will give you all the parameters.</p>
<p>1 A. You keep interrupting me. 2 Q. Go ahead. 3 A. But you keep interrupting me, you know. 4 Q. I'm listening. 5 A. Can you listen to me? 6 Q. I'm trying. Go ahead. 7 A. I cannot answer you if you keep 8 interrupting me, you know. 9 Q. Answer my question, doctor. 10 A. I'm answering your question, but don't 11 interrupt me. 12 Q. Go ahead. Tell me the parameters -- 13 A. I mean -- 14 Q. -- specifically. 15 A. I'm -- I'm -- 16 MR. BRANTINGHAM: He's asking, doctor, 17 specifically what did the committee use. And 18 if -- if you don't know because you weren't 19 there, that's fine, you can -- that can be your 20 answer. 21 A. The selection committee, they're having 22 their parameters to choose the right donor for 23 the right recipient, and these parameters are, 24 you know, for Mayo committee. And when I look 25 to the -- that donor I was, you know -- you</p>	<p>1 MR. BRANTINGHAM: So, doctor, if you 2 don't yourself know what parameters they used, 3 then you can just say that and that should be 4 the end of those questions, frankly. 5 A. Yes. You can refer to the -- to the -- 6 to the selection committee. 7 Q. I know I can do that, but that's not my 8 question. 9 A. Uh-huh. 10 Q. My question is: Do you know any of the 11 other parameters other than ventricular size? 12 A. I give you the, you know, the blood 13 grouping. 14 Q. Right. But I'm talking about the size 15 of the heart. 16 A. You can -- you can ask the -- the 17 selection committee about all the measurements. 18 Q. I -- I -- 19 But I know I can ask them that, but I'm 20 not asking them that right now. I'm asking you 21 because you're -- 22 A. Uh-huh. 23 Q. -- the one who's having your deposition 24 taken. 25 A. Uh-huh.</p>

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<p>1 Q. Do you know any of the parameters that 2 the selection committee used to determine this 3 was a size match other than ventricular size? 4 A. Like the heart size. 5 Q. What -- what about the heart size? 6 A. The heart size. The heart size. 7 Q. That's different than the ventricular 8 size? 9 A. There is -- 10 Yes, because the echo is a dif -- I 11 mean the LV is an echo sizing, while the heart 12 size, we can measure it on the x-ray. 13 Q. Uh-huh. And you said you looked at the 14 parameters yourself and you were satisfied that 15 this was an appropriate-sized heart for Mr. 16 Leopold. 17 A. Yes, was appropriate. 18 Q. Yeah. 19 A. Uh-huh. 20 Q. And so when you looked at the 21 parameters and satisfied yourself that this was 22 an appropriate-sized heart, you looked at the 23 ventricular size and then you looked at the 24 heart size. Did you look at anything else? 25 A. I looked, you know, to -- to the whole,</p>	<p>1 Q. What other details were pertinent to 2 you with respect to this being an -- an 3 appropriate size other than ventricular size and 4 the heart size on the x-ray? 5 A. I looked to all the pertinent details 6 and documents for this donor, and this donor was 7 optimum to us to choose. 8 Q. Yeah. Okay. Again, we're talking 9 about size only. We're going to get to those 10 other factors in a minute. 11 If the only two things you looked at 12 were the ventricular size on the echo and the 13 heart size on the x-ray, that's okay, but I want 14 to make sure I'm getting a complete answer. You 15 keep telling me no, no, I looked at everything, 16 I looked at everything that was pertinent. I 17 don't know what's pertinent to you. What else 18 did you look at with respect to this being an 19 appropriately-sized heart? 20 A. Yes. I looked all -- for all the 21 details in this donor, and when I'm saying that, 22 I looked to the echo, I looked to the 23 catheterization, I looked to the -- you know, 24 all the history and -- you know, for this 25 patient and to the lab tests, you know. So all</p>
<p>1 you know, documents for this donor on the -- on 2 the UNOS database. 3 Q. We're going to talk about lots of other 4 factors in a minute. We're just sticking with 5 heart size right now. 6 A. Uh-huh. 7 Q. I want to make sure I'm giving you an 8 opportunity to completely answer my question. 9 A. Yes. 10 Q. Were there any other parameters that 11 you looked at other than ventricular size and 12 heart size? 13  14 15 16 17 18 19 20 21 Q. -- things like that. We're sticking 22 with heart size, the donor size, appropriately- 23 sized heart. 24 A. I looked to all the donor details 25 before leaving Rochester.</p>	<p>1 these measures I looked at and I was confident 2 that was a suitable organ to take for this 3 recipient. 4 Q. Did the respective weights between the 5 donor and the recipient matter to you? 6 A. Did what? 7 Q. Weight. Their weight. 8 A. Oh, body weight. 9 Q. Yes. 10 A. Yes. 11 Q. Was that relevant to you? 12 A. Yes. 13 Q. Okay. So you saw that the donor was 14 significantly heavier than Mr. Leopold; right? 15 MR. BRANTINGHAM: Object to the form of 16 the question. 17 A. I can't remember the numbers, -- 18 Q. Okay. 19 A. -- you know, in the weight for -- each 20 body weight for it. 21 Q. All right. Other than ventricular 22 size, heart size on x-ray, and body weight, any 23 other parameters relevant to determining the 24 size of the heart? 25 A. I'm saying to you I am taking all the</p>

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<p>1 documents --</p> <p>2 Q. Okay.</p> <p>3 A. -- and parameters of the -- of the</p> <p>4 donor and looked at them, --</p> <p>5 Q. Okay.</p> <p>6 A. -- and all parameters of this donor</p> <p>7 were optimum to be selected for this recipient.</p> <p>8 Q. Uh-huh. Okay.</p> <p>9 MR. BRANTINGHAM: Mr. Thompson's really</p> <p>10 specifically asking about the size, doctor. So</p> <p>11 any other factors that you can -- as you sit</p> <p>12 here today that you can recall that are specific</p> <p>13 to the size of the heart, setting aside the</p> <p>14 other issues.</p> <p>15 (Interruption by videographer.)</p> <p>16 MR. BRANTINGHAM: If that's all you can</p> <p>17 remember as you sit here, that's okay, just say</p> <p>18 so.</p> <p>19 A. Do you mean the echo measurements?</p> <p>20 Because -- because when you are saying the size,</p> <p>21 it's -- it's -- is the medical term. For</p> <p>22 example, the aortic diameters, that's -- that's</p> <p>23 a size for you, that's an echo measurement and</p> <p>24 that's important for us. The -- for example,</p> <p>25 the ventricular septum, the -- the LV wall,</p>	<p>1 not me. If you were going to draw up the</p> <p>2 perfect heart for you to go and procure, what</p> <p>3 would be the cause of death?</p> <p>4 A. That's your answer, it depends on</p> <p>5 circumstances of the -- of the donor. Because</p> <p>6 your -- your question --</p> <p>7 For example, if I want to go and get a</p> <p>8 heart from a road traffic accident with multiple</p> <p>9 injuries, that's different story. So it depends</p> <p>10 on the circumstances of the -- of the donor.</p> <p>11 Q. Yeah. No, I'm asking like in --</p> <p>12 Paint me a picture of the perfect donor</p> <p>13 heart in terms of cause of death.</p> <p>14 A. There are many circumstances that we</p> <p>15 consider.</p> <p>16 Q. I understand there's lots of</p> <p>17 circumstances you consider. You can't tell me</p> <p>18 like this would be ideal? And if you can't,</p> <p>19 that's fine.</p> <p>20 MR. BRANTINGHAM: And if you don't</p> <p>21 understand the question, that's fine, too.</p> <p>22 Because it's --</p> <p>23 A. Can you --</p> <p>24 MR. BRANTINGHAM: He's asking you to</p> <p>25 imagine a cause of death, what's the perfect way</p>
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<p>1 these are all diameters. It's not sizes.</p> <p>2 Because you are asking about size. That's a</p> <p>3 different story.</p> <p>4 Q. Uh-huh. Great. This is -- this is</p> <p>5 what I'm talking about. So you were satis --</p> <p>6 how did --</p> <p>7 How was Noah Leopold's aortic diameter</p> <p>8 measured?</p> <p>9 A. I can't remember the exact number.</p> <p>10 Q. How would it be -- no, no. How would</p> <p>11 it be measured?</p> <p>12 A. There are two types of measurements,</p> <p>13 echo, echocardiogram, or CT scan. One of them.</p> <p>14 Q. Okay. All right.</p> <p>15 In looking at the UNOS donor records,</p> <p>16 you saw the cause of death of this donor; right?</p> <p>17 A. I saw it.</p> <p>18 Q. Cause of death is an important part of</p> <p>19 assessing whether an organ is suitable for</p> <p>20 transplantation; right?</p> <p>21 A. It's part of them.</p> <p>22 Q. Uh-huh. And certain causes of death</p> <p>23 are more optimal than others; right?</p> <p>24 A. Like what?</p> <p>25 Q. Well you're the procurement surgeon,</p>	<p>1 for somebody to die and then give up their</p> <p>2 heart. I mean that's what he's asking.</p> <p>3 A. He's a -- he's a -- he's a donor, you</p> <p>4 know, and --</p> <p>5 MR. BRANTINGHAM: Maybe a more specific</p> <p>6 question might get you where you're trying to go</p> <p>7 here.</p> <p>8 Q. Sure. How about dying of an</p> <p>9 intracranial hemorrhage is not optimal; is it?</p> <p>10 MR. BRANTINGHAM: Object to the form of</p> <p>11 the question.</p> <p>12 A. I don't think, no.</p> <p>13 Q. Hmm?</p> <p>14 A. No.</p> <p>15 Q. No what?</p> <p>16 MR. BRANTINGHAM: No was the answer to</p> <p>17 the question which was: Dying of intracranial</p> <p>18 hemorrhage is not optimal, comma, is it? The</p> <p>19 answer was no.</p> <p>20 MR. THOMPSON: Right. But that could</p> <p>21 be interpreted both ways.</p> <p>22 Q. Are you agreeing with me that you're</p> <p>23 right, Mr. Thompson, intracranial hemorrhage is</p> <p>24 not optimal, or are you saying, no, Mr.</p> <p>25 Thompson, you're wrong, intracranial hemorrhage</p>

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<p>1 doesn't matter?</p> <p>2 MR. BRANTINGHAM: Or something else?</p> <p>3 Those aren't the only choices.</p> <p>4 Q. Or something else. Sure.</p> <p>5 A. Our donor was an optimum donor.</p> <p>6 Q. Wasn't my question. Okay? Wasn't my question.</p> <p>7 MR. BRANTINGHAM: He's just asking you in the abstract, hypothetically, or in general, is dying of an intracranial hemorrhage an optimal --</p> <p>8 Q. Yeah.</p> <p>9 MR. BRANTINGHAM: -- history for a donor.</p> <p>10 Q. Or put it different -- let me ask --</p> <p>11 I'll put it a different way and maybe make it easier.</p> <p>12 A. Yes, make it.</p> <p>13 Q. Does intracranial hemorrhage have any impact on survival post heart transplant using a donor from an intracranial hemorrhage?</p> <p>14 A. No.</p> <p>15 Q. Really?</p> <p>16 A. Yes.</p> <p>17 Q. Did you know that Dr. Villavicencio and</p>	<p>1 Q. So just from the title of --</p> <p>2 Maybe I'm a little bit unclear. Do you remember reading this article?</p> <p>3 A. I read, you know, many of the article</p> <p>4 from Mayo, and I read something about, you know,</p> <p>5 survival with different, you know, causes of,</p> <p>6 you know, death for the donors.</p> <p>7 Q. Okay.</p> <p>8 A. Yes.</p> <p>9 Q. So I want you to listen carefully to the title of this article and tell me if this rings any bells for you. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. "Heart Transplant Recipients of Donors with Intracranial Hemorrhage Have Worse Survival." First of all, does that ring any bells to you?</p> <p>12 A. It's what -- what it says. It --</p> <p>13 MR. BRANTINGHAM: He's just asking if you remember that article, doctor, this particular article.</p> <p>14 Q. Yeah. If that jogs your memory that maybe you looked at this abstract.</p> <p>15 A. I -- I read, you know, many articles</p> <p>16 from here -- and that is from here and from</p>
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<p>1 a Dr. Daly and a bunch of their colleagues actually wrote an article entitled "Heart Transplant Recipients of Donors with Intracranial Hemorrhage Have Worse Survival?"</p> <p>2 Have you ever heard of that?</p> <p>3 A. Yeah. But -- but --</p> <p>4 Q. Have you heard of that article?</p> <p>5 A. I heard.</p> <p>6 Q. Hmm?</p> <p>7 A. Yes.</p> <p>8 Q. What was the conclusion of that study?</p> <p>9 MR. BRANTINGHAM: If you know, doctor.</p> <p>10 Q. If you know.</p> <p>11 MR. BRANTINGHAM: Foundation.</p> <p>12 Q. You said you're aware of it.</p> <p>13 A. I can't -- I can't remember exactly there, but you will find a lot of studies about this.</p> <p>14 Q. Okay. Do you know what The Journal of Heart and Lung Transplantation is?</p> <p>15 A. Of course.</p> <p>16 Q. Do you subscribe to it?</p> <p>17 A. I have many publications in this.</p> <p>18 Q. You have many publications in it?</p> <p>19 A. Yes.</p>	<p>1 outside, and that's probably one of them.</p> <p>2 Q. Okay.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Just from the title of the article, what do you think the conclusion probably was?</p> <p>5 MR. BRANTINGHAM: Object to foundation.</p> <p>6 A. You can -- you can read. I can read the article to give you the -- the conclusion. I can read it, too.</p> <p>7 Q. Well the purpose of the study was: "We sought to determine if recipients of donors who die due to intracranial hemorrhage have worse outcomes post heart transplant." That's the question I was just asking you; right?</p> <p>8 A. The question --</p> <p>9 The answer to your question, there are many parameters that determine the suitability and the survival rate. You know, the survival --</p> <p>10 Q. Right. I'm just talking about one parameter.</p> <p>11 MR. BRANTINGHAM: Just let him answer.</p> <p>12 A. Don't interrupt me, please.</p> <p>13 Q. I'm just talking about one parameter, and that --</p>

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<p>1 A. I'm --</p> <p>2 Q. -- and that parameter is intracranial 3 hemorrhage. So I want to make sure we're on the 4 same page here. I'm not talking about whether 5 there's a bunch of parameters, I'm talking about 6 intracranial hemorrhage. And the question that 7 I asked you before was whether you agreed with 8 me that people who die from intracranial 9 hemorrhage have a worse outcome if that donor 10 heart is used for a heart transplant, and you 11 disagreed with me on that --</p> <p>12 MR. BRANTINGHAM: That's actually not 13 true.</p> <p>14 MR. THOMPSON: Oh, you're right.</p> <p>15 Q. No. I asked if -- if it had any 16 impact. You said you didn't think it had any 17 impact.</p> <p>18 MR. BRANTINGHAM: No, actually you 19 asked if it was optimal and he --</p> <p>20 MR. THOMPSON: No, and then I asked 21 another question.</p> <p>22 MR. BRANTINGHAM: Okay.</p> <p>23 MR. THOMPSON: But I'll ask it again.</p> <p>24 MR. BRANTINGHAM: Let's not pretend 25 like we know what he said. Just ask a question.</p>	<p>1 MR. BRANTINGHAM: Yeah. Let him ask 2 the question. So now he's not asking you about 3 the article, he's just asking you --</p> <p>4 MR. THOMPSON: A question.</p> <p>5 MR. BRANTINGHAM: -- in general.</p> <p>6 Q. Listen to my question, please, --</p> <p>7 A. Uh-huh. Uh-huh.</p> <p>8 Q. -- and then answer my question.</p> <p>9 Do you agree that, as a general 10 concept, heart transplant recipients of donors 11 with intracranial hemorrhage have worse 12 survival?</p> <p>13 A. You are asking my opinion.</p> <p>14 Q. Yeah.</p> <p>15 A. I --</p> <p>16 MR. BRANTINGHAM: And I'll just object 17 to foundation. If you know, go ahead.</p> <p>18 A. I --</p> <p>19 You know, I don't think so, but 20 that's -- that needs to -- more evidence.</p> <p>21 Q. Okay. So when you went to procure this 22 heart for Mr. Leopold, --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- the fact that the donor had died of 25 an intracranial hemorrhage wasn't relevant to</p>
<p style="text-align: center;">Page 155</p> <p>1 MR. THOMPSON: I know exactly what he 2 said.</p> <p>3 MR. BRANTINGHAM: Okay.</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 Q. But I'll ask it again, now that you -- 6 now that I've read you the title of this 7 article.</p> <p>8 A. Uh-huh.</p> <p>9 Q. Let me ask you this question.</p> <p>10 A. Yes.</p> <p>11 Q. Do you agree with me that heart 12 transplant recipients of donors with 13 intracranial hemorrhage have worse survival?</p> <p>14 A. That --</p> <p>15 MR. BRANTINGHAM: I will object to the 16 form and the foundation --</p> <p>17 A. That --</p> <p>18 MR. BRANTINGHAM: -- and just note for 19 the record that you're asking the witness about 20 an article that you're not showing him.</p> <p>21 A. That's the conclusion from the authors.</p> <p>22 Q. No. I'm asking if you agree as a 23 general concept -- no, just -- shake your head 24 all you like. You got to listen to my question.</p> <p>25 A. That's the conclusion of the authors.</p>	<p style="text-align: center;">Page 157</p> <p>1 you at all.</p> <p>2 MR. BRANTINGHAM: Object to the form.</p> <p>3 A. It is not irrelevant. It's part of the 4 whole story.</p> <p>5 Q. Uh-huh.</p> <p>6 A. It's -- it's part of the whole 7 circumstances. It's one of them --</p> <p>8 Q. Uh-huh.</p> <p>9 A. -- we take in consideration.</p> <p>10 Q. So let me ask it a different way.</p> <p>11 A. Yes.</p> <p>12 Q. Did the fact that the donor had died of 13 an intracranial hemorrhage give you any pause 14 whatsoever in making the decision about whether 15 this was a suitable heart?</p> <p>16 A. It's part of the assessment that 17 takes -- that's taken in consideration.</p> <p>18 Q. Got it. Okay. Let's ask it a 19 different way then.</p> <p>20 A. Uh-huh.</p> <p>21 Q. When we are looking at a donor heart, 22 there are some characteristics of that heart 23 that we could put in the plus column, there's 24 some characteristics of the heart that we could 25 put in the minus column, and then there's</p>

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<p>1 probably some characteristics that don't matter 2 one way or another. Am I right about that? 3 A. Okay. 4 Q. For example, having an ejection 5 fraction of 65 percent, in and of itself we'd 6 put that in the plus column; right? That's a 7 good thing. 8 A. Correct. 9 Q. All right. Having a blood type of the 10 same don -- of the same as the person who you're 11 trying to transplant it in, that goes in the 12 plus column; right? 13 A. Right. 14 Q. A heart being from a young donor, a 15 25-year-old donor, that thing, in and of itself, 16 that goes in the plus column; right? 17 A. There are multiple factors, again, 18 because you're considering, you know, an 19 absolute number, you know, but that's not an 20 absolute thing. 21 Q. No, no. Fair enough. 22 But by and large, you would prefer to 23 have a heart -- all things -- all other things 24 being equal, you'd prefer it to be from a 25 25-year-old than a 65-year-old; right?</p>	<p>1 particular. As a cardiothoracic surgeon, who's 2 board certified in Jordan, is methamphetamine 3 use good for your heart? 4 A. We don't advise people to take 5 methamphetamine. 6 Q. I understand that, and there would be 7 lots of reasons for that. I want to stick to my 8 question. Can -- 9 As a Mayo Clinic cardiothoracic 10 surgeon, can you at least agree with the 11 statement methamphetamine is not good for your 12 heart? 13 A. It's -- it's one of the literature 14 that -- where at that -- methamphetamine had 15 side effects -- 16 Q. Uh-huh. 17 A. -- on the -- on the body, and part of 18 them is the heart. 19 Q. This is a really simple question. I'm 20 just going to stick with my question. 21 A. And -- 22 Q. I want you to answer my question, and 23 if you can't answer it with a yes or no, you let 24 me know. 25 Do you agree that methamphetamine is</p>
<p style="text-align: center;">Page 159</p> <p>1 A. That's correct. 2 Q. Perfect. 3 A. If you are putting this -- this 4 parameter. 5 Q. Great. Okay. So now let's talk about 6 intracranial hemorrhage. 7 A. Yes. 8 Q. When you went to procure this heart for 9 Mr. Leopold's transplant, was intracranial 10 hemorrhage in the plus column, in the minus 11 column, or it just didn't matter one way or 12 another? 13 A. In the area in between. 14 Q. Great. How about the fact that the 15 donor was a meth addict? 16 A. What was that? 17 Q. A meth addict, methamphetamine. 18 Methamphetamine's bad for your heart; 19 isn't it? 20 A. Oh, yeah. Oh, okay. You talking about 21 the drugs now. 22 Q. Methamphetamine is not good for the 23 heart, is it, as a general concept? 24 A. You are talking about drugs. Right? 25 Q. Yeah. I'm talking about one drug in</p>	<p style="text-align: center;">Page 161</p> <p>1 not good for your heart? 2 A. It has a side effect that may impact 3 the heart. 4 Q. Why can't you just answer my question? 5 A. I'm answering you. 6 Q. Okay. So I'm going to ask it again. 7 And if you think it can't be answered with a yes 8 or no, you let me know. Okay? 9 A. Sure. 10 Q. You understand? 11 A. I understand. 12 Q. You understand I'm looking for a yes or 13 a no? 14 A. I understand. 15 Q. And you understand that if you don't 16 think it can be answered with a yes or a no, you 17 are to tell me; right? 18 A. I'm supposed here to give you the right 19 and accurate answers. 20 Q. Yeah. 21 A. Right? 22 Q. To my questions. 23 A. To your questions. 24 Q. My question is, yes or no, is 25 methamphetamine good for your heart?</p>

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<p>1 A. I'm telling you, all the literature is 2 saying methamphetamine may have side effects on 3 the body and the heart as one of the organs in 4 the body.</p> <p>5 Q. Add --</p> <p>6 MR. BRANTINGHAM: So, doctor, does that 7 mean you're not comfortable answering that 8 question yes or no, your answer is the one you 9 just gave?</p> <p>10 THE WITNESS: No. I'm -- I'm telling 11 him what I know and -- and the true answer.</p> <p>12 MR. BRANTINGHAM: Okay.</p> <p>13 Q. And that's an adverse side effect on 14 the heart; right?</p> <p>15 A. Yes.</p> <p>16 Q. Yes. And so if we're going back to our 17 plus/minuses, certainly we can agree that being 18 a meth addict goes in the minus column; right?</p> <p>19 MR. BRANTINGHAM: Object to the form, 20 foundation. Do you understand the question?</p> <p>21 THE WITNESS: I answered him.</p> <p>22 A. Amphetamine may have side effects on 23 the body, and part of this is the heart.</p> <p>24 Q. Yeah. It's a different question now 25 though.</p>	<p>1 ejection fraction of 60 to 65 percent was in the 2 plus column; right?</p> <p>3 A. That's correct.</p> <p>4 Q. The fact that this donor had the same 5 blood type that -- as Mr. Leopold was in the 6 plus column; right?</p> <p>7 A. That's a yes. Of course.</p> <p>8 Q. The fact that he didn't have -- this 9 donor didn't have any structural abnormalities 10 in his heart was in the plus column; right?</p> <p>11 A. Yes.</p> <p>12 Q. Can you and I agree that the fact that 13 he was a meth addict goes in the minus column?</p> <p>14 MR. BRANTINGHAM: Object to form.</p> <p>15 Q. For this donor for Mr. Leopold.</p> <p>16 A. You are assuming something that the 17 methamphetamine having a side effects --</p> <p>18 Q. No, I'm not.</p> <p>19 A. -- on the heart.</p> <p>20 Q. I'm not.</p> <p>21 MR. BRANTINGHAM: Just let him ask the 22 question.</p> <p>23 Q. I'm asking a really simple question. 24 When you went to procure this heart for 25 Mr. Leopold, --</p>
<p>1 MR. BRANTINGHAM: Now he's trying to 2 ask how -- what is the relevance of a donor's 3 history of methamphetamine use --</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 MR. BRANTINGHAM: -- in terms of 6 assessing suitability of the heart.</p> <p>7 MR. THOMPSON: Yeah.</p> <p>8 MR. BRANTINGHAM: He's just asking in 9 general I think.</p> <p>10 MR. THOMPSON: No, my --</p> <p>11 No, no. My question is for this 12 patient.</p> <p>13 MR. BRANTINGHAM: Oh, okay.</p> <p>14 MR. THOMPSON: This is -- this is -- 15 So let me -- let me ask my question, 16 please.</p> <p>17 MR. BRANTINGHAM: Sure.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. We're back to our plus column, minus 20 column, or it doesn't matter one way or another. 21 You told me that for Mr. Leopold, intracranial 22 hemorrhage was in the middle, doesn't matter one 23 way or another; right?</p> <p>24 A. Yes.</p> <p>25 Q. The fact that this donor had an</p>	<p>1 A. Uh-huh.</p> <p>2 Q. -- did it cross your mind that the fact 3 that this guy was a meth addict may be a 4 negative for this heart?</p> <p>5 MR. BRANTINGHAM: Okay. So make sure 6 you understand that question, doctor. Just 7 answer that question.</p> <p>8 A. I told you, methamphetamine may have 9 side effects on the -- on the body and part of 10 the heart. That doesn't mean that it has its 11 side effects on that donor.</p> <p>12 Q. I understand all that. None of that 13 was my question.</p> <p>14 My question was: For this donor, for 15 this patient, was it at least relevant to you 16 that this donor was using IV meth and smoking 17 meth weekly for the last six years?</p> <p>18 MR. BRANTINGHAM: Hold on a second. 19 That wasn't your question.</p> <p>20 MR. THOMPSON: It is now.</p> <p>21 MR. BRANTINGHAM: So now this is a new 22 question.</p> <p>23 A. It's a new one.</p> <p>24 Q. Yeah. I'm going to see if I can get a 25 straightforward answer to this question.</p>

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<p>1 A. I'm giving you --</p> <p>2 MR. BRANTINGHAM: Well you could ask a 3 much more straightforward question, frankly.</p> <p>4 So can we just -- let's read back that 5 question, really focus on the specific question, 6 and answer that specific question.</p> <p>7 (Record read by the reporter.)</p> <p>8 Q. Was it relevant?</p> <p>9 MR. BRANTINGHAM: I just object to 10 foundation.</p> <p>11 A. We take all the data and documents for 12 the donors and we like to know every aspect of 13 the donor to know.</p> <p>14 Q. Great. And the reason that you like to 15 know every aspect of the donor is so that you 16 can use those aspects as part of your assessment 17 about whether this is a suitable organ; right?</p> <p>18 A. For the whole assessment.</p> <p>19 Q. Right. Okay. So now back to the 20 question that I think is pretty doggone simple.</p> <p>21 Let's do it this way: Does meth go in 22 the plus column?</p> <p>23 MR. BRANTINGHAM: I'll object to the 24 form of the question. Do you understand the 25 whole plus column/minus column --</p>	<p>1 MR. BRANTINGHAM: Plus, minus, or in 2 the middle.</p> <p>3 Q. Which column does it fall in?</p> <p>4 MR. BRANTINGHAM: Or something else.</p> <p>5 A. I'll put them in the middle.</p> <p>6 Q. Being a weekly meth user wasn't a plus 7 and it wasn't a minus, just wasn't relevant at 8 all.</p> <p>9 A. There are --</p> <p>10 MR. BRANTINGHAM: Object to the form of 11 the question.</p> <p>12 Q. Don't tell me there are many things --</p> <p>13 MR. BRANTINGHAM: Just hold on -- hold 14 on, doctor.</p> <p>15 Q. -- because I'm asking about one thing.</p> <p>16 MR. BRANTINGHAM: Again, if you would 17 restrict yourself to asking questions, Brandon.</p> <p>18 MR. THOMPSON: I am.</p> <p>19 MR. BRANTINGHAM: Shouting at the 20 witness "don't tell me this and that" --</p> <p>21 MR. THOMPSON: I shouldn't have to.</p> <p>22 Q. Doctor, this -- I know --</p> <p>23 MR. BRANTINGHAM: Hold on just one 24 second. This is not cool. Okay? It's not 25 okay. You don't get to -- however you want to</p>
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<p>1 MR. THOMPSON: Of course he does, 2 because he --</p> <p>3 MR. BRANTINGHAM: -- thing he's talking 4 about?</p> <p>5 Q. Of course you understand it, because 6 you've told me --</p> <p>7 MR. BRANTINGHAM: Just hold on.</p> <p>8 Q. -- you told me that the good ejection 9 fraction was a plus, that the blood type 10 compatibility was a plus, that the lack of 11 structural abnormality was a plus. You told me 12 all those things. Right? And you told me that 13 intracranial hemorrhage wasn't a plus or a 14 minus, it was in the middle. Right?</p> <p>15 A. Right.</p> <p>16 Q. Yeah. You understand the plus, minus, 17 and in the middle; don't you?</p> <p>18 A. Yes.</p> <p>19 Q. Great. Tell me which of those columns 20 the fact that this dude was a meth addict falls 21 into.</p> <p>22 MR. BRANTINGHAM: And by "dude" he 23 means the donor.</p> <p>24 THE WITNESS: The donor. Okay.</p> <p>25 Q. Which --</p>	<p>1 call it, shouting, whispering.</p> <p>2 MR. THOMPSON: Okay.</p> <p>3 MR. BRANTINGHAM: Telling the witness 4 "don't tell me X, Y and Z" is deeply 5 inappropriate questioning. It really is.</p> <p>6 MR. THOMPSON: I disagree with you.</p> <p>7 MR. BRANTINGHAM: Okay.</p> <p>8 MR. THOMPSON: So --</p> <p>9 And it's fine. You and I can disagree 10 with one another.</p> <p>11 MR. BRANTINGHAM: We sure can. We do.</p> <p>12 MR. THOMPSON: I think --</p> <p>13 So I think that what's happening here 14 is I've got a witness who is perfectly happy to 15 give straightforward answers to questions that 16 he thinks are helpful, --</p> <p>17 MR. BRANTINGHAM: Uh-huh.</p> <p>18 MR. THOMPSON: -- and when there's 19 questions that he doesn't want to answer, 20 because he knows that the truthful answer to the 21 question is problematic for him, --</p> <p>22 MR. BRANTINGHAM: Uh-huh.</p> <p>23 MR. THOMPSON: -- he's dancing around 24 it.</p> <p>25 MR. BRANTINGHAM: Yeah.</p>

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<p>1 MR. THOMPSON: And -- and that's fine. 2 He can try to do that for as long as he wants 3 to. I'm entitled to call him on that. 4 MR. BRANTINGHAM: Sure. 5 MR. THOMPSON: And I'm entitled to ask 6 the questions in the way that I want to ask the 7 questions. And again, if you think I'm way out 8 of line, that's fine, I get it. We haven't even 9 gotten into the hard stuff yet. 10 Q. So you know darn well what the plus, 11 minus, and in the middle thing is. And is it 12 really your testimony, under oath as a 13 cardiothoracic surgeon, that the fact that 14 somebody was a meth addict who was using meth 15 weekly for at least the past six years has no 16 relevance whatsoever to your decision about 17 whether this was going to be a suitable heart 18 for this patient? 19 A. That -- 20 MR. BRANTINGHAM: Object to form and 21 foundation. Go ahead and answer the question, 22 doctor. 23 A. That -- 24 MR. BRANTINGHAM: He's asking if it has 25 no relevance whatsoever.</p>	<p>1 inhaled methamphetamine at least weekly for at 2 least the last six years. Do you understand 3 that? 4 A. I understand that. 5 Q. You understand that I am asking you 6 whether you as a cardiac surgeon would put that 7 weekly meth abuse as a plus for a heart, as a 8 minus for a heart, or as having no relevance to 9 a heart. Right? Do you understand that? 10 A. I understand. 11 Q. Thank you. You understand that. 12 A. Yes. 13 Q. So which column would you put it in? 14 A. You -- 15 The way you are putting the columns, I 16 cannot do that your way, but I can tell you my 17 answer. Your answer -- your question should be 18 answered, but it depends on the way you deliver 19 your question. So if you put these columns -- 20 these columns, okay, the gray area in between, 21 it's -- it's a gray area. Okay? This gray area 22 may be, you know, to the -- to the negative or 23 to the right -- to the positive. Right? 24 Q. Uh-huh. 25 A. It's not the whole gray area.</p>
<p style="text-align: center;">Page 171</p> <p>1 A. That's not true. 2 Q. Okay. So it does have relevance. 3 A. Because -- 4 Q. Hold on. Does it have relevance? 5 A. Let me -- let me continue. 6 Otherwise -- 7 MR. BRANTINGHAM: Just start with 8 just -- just that one. 9 MR. THOMPSON: Yeah. 10 MR. BRANTINGHAM: And then little 11 pieces is what's going to get this done. So 12 does it have relevance? I think you said -- go 13 ahead. 14 A. Yeah. 15 MR. BRANTINGHAM: Okay. Start with 16 that. Let him ask another question. 17 A. I'm telling about all these factors -- 18 Q. Hold on. Hold on. Hold on. Don't -- 19 You got to just listen to my question. 20 I'm not asking about all these factors. I'm not 21 asking about stuff in the aggregate. I'm asking 22 you about one factor. Do you understand that? 23 A. I understand. 24 Q. Okay. The one factor I am asking you 25 about is the donor's history of using IV and</p>	<p style="text-align: center;">Page 173</p> <p>1 That's -- that's my answer to you. 2 Q. Perfect. 3 So with respect to methamphetamine 4 abuse, would that be more towards the negative 5 side of the gray area? 6 A. I can tell you we can put it in the 7 gray area. In that gray area. 8 Q. Okay. More to the positive side of the 9 gray area? 10 A. I can't -- 11 You know, there are multiple 12 circumstances that we take together. It's not 13 one factor. 14 Q. Right. But I'm asking you about one 15 factor. 16 A. I'm -- 17 Q. I'm asking you just about the 18 methamphetamine. 19 A. I'm asking -- I'm answering you -- 20 MR. BRANTINGHAM: And so -- 21 Just hang on one second. What's the 22 actual question, more to the -- more to where? 23 Q. You -- you just got done telling me 24 that when we're in this gray area, some of it is 25 more to the positive of the gray area and some</p>

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<p>1 of it is more to the negative of the gray area. 2 I'm asking you to do that exercise with respect 3 to methamphetamine abuse. 4 MR. BRANTINGHAM: Okay. 5 Q. Is it more to the positive side of the 6 gray area or more to the negative side? 7 A. It's in the gray area. If you want 8 to -- you know, specifically in this, you know, 9 in this area, I'll put it little bit to the 10 negative side. 11 Q. Thank you. 12 How about the fact that he abused 13 marijuana? 14 MR. BRANTINGHAM: "He" being the donor. 15 Q. "He" being the donor. 16 Is that in the gray area, too? 17 A. In the gray area. 18 Q. More to the negative or more to the 19 positive side of the gray area? 20 A. The same answer. 21 Q. More to the negative. 22 A. To the same answer like the gray area. 23 Q. Yeah. More to the negative side. 24 A. Yes. 25 Q. Yeah. How about the fact that he was a</p>	<p>1 A. Your next question. 2 Q. My question is: As a cardiac 3 surgeon, -- 4 A. Yes. 5 Q. -- what's worse for your heart, being a 6 pack-and-a-half-a-day smoker or abusing meth 7 every week for six years? 8 A. All these are risks factors. 9 Q. I understand that. I'm asking you 10 which one's worse for your heart. 11 A. I know your question, and I'm answering 12 you. All are these -- these are risk factors on 13 the heart. 14 Q. Right. My question is: What's worse 15 for your heart? 16 A. Uh-huh. 17 Q. Let me finish. 18 A. I'm not talking. I'm not interrupting 19 you like you do. 20 Q. What's worse for your heart, smoking a 21 pack and a half a day of cigarettes for seven 22 years or abusing meth weekly for six years? If 23 you know. 24 MR. BRANTINGHAM: And if you're not 25 able to answer that in the abstract, doctor, you</p>
<p>1 Page 175</p> <p>1 convicted felon who was incarcerated for 2 20 years of his 40-year life, is that a 3 positive, a negative, or in the gray area? 4 A. Gray area. 5 Q. Okay. More to the positive side of the 6 gray area or more to the negative side? 7 A. It's to the negative side. 8 Q. Yeah. 9 Opioid use; positive, negative, or gray 10 area? 11 A. Gray area. 12 Q. More to the positive or more to the 13 negative side of the gray area? 14 A. The negative. 15 Q. The fact that he was a cigarette 16 smoker, pack-and-a-half-a-day smoker, cigarettes 17 are not good for your heart; are they? 18 A. They are not good. 19 Q. It's like one of the worst things you 20 can do for your heart other than maybe taking 21 cocaine or maybe meth; right? 22 MR. BRANTINGHAM: Object to the 23 foundation. 24 Q. Well if you know. What's worse for 25 your heart, cigarettes or meth?</p>	<p>1 can just say so. 2 A. I'm telling you, these two factors are 3 risk factors for the heart. That's all. 4 Q. Got it. 5 You can't tell me which one's worse; 6 right? 7 A. Both of them they are having risk. 8 Q. You can't tell me which one is worse. 9 What you can tell me is they're both bad -- 10 A. Yes. 11 Q. -- for your heart. 12 A. Yes. 13 Q. So how about the fact that he had taken 14 LSD and mushrooms, would that be in the gray 15 area? 16 A. I don't -- I don't think that's 17 something -- 18 It's part of the history. 19 Q. Yeah. Would that be positive, 20 negative, or gray area? 21 A. I don't think we -- 22 It's in the gray area. 23 Q. Is it more to the positive side or more 24 to the negative side? 25 A. It's in the middle.</p>

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<p>1 Q. In the middle. 2 Back to intracranial hemorrhage, 3 because we talked about that before we got into 4 the shading of the gray area. 5 A. Uh-huh. 6 Q. Would intracranial hemorrhage as the 7 cause of death for this donor be more on the 8 negative side of the gray area at least? 9 A. I'll put it in the midline little bit. 10 Q. Little bit negative. 11 A. On the midline. 12 Q. So just right in the middle. 13 A. Yes. 14 Q. Alcohol use, where does that fall? 15 A. Gray area. 16 Q. More to the negative. 17 A. More to the negative. 18 Q. Yeah. 19 You knew that Noah Leopold was under 20 consideration for a liver transplant, too; 21 right? 22 A. You can check the documents. 23 Q. I'm asking you if you were aware of 24 that. 25 A. I'm aware.</p>	<p>1 A. Sure. 2 Q. Do you have any idea what liver 3 dysfunction does to your odds of undergoing a 4 successful heart transplant? 5 MR. BRANTINGHAM: Object to foundation 6 and form. 7 A. We have the selection committee and 8 the, you know, surgical committee doing heart 9 and lung transplant -- heart and the liver 10 transplant also. You can direct this question 11 directly to them. 12 Q. Well I'm directing it to you. 13 A. Okay. 14 Q. Do you know anything about what liver 15 dysfunction does in terms of predicting heart 16 transplant outcomes? 17 A. We know that, you know, that the 18 outcomes are, you know, are good if we have, you 19 know, a good liver, good heart, good lungs, you 20 know, as any organ. 21 Q. Right. And the converse is also true, 22 if you've got liver issues, that is a poor 23 prognostic factor for successful heart 24 transplant; is it not? 25 MR. BRANTINGHAM: Object to form and</p>
<p>1 Q. Okay. What does having liver 2 dysfunction do in terms of risk factors for 3 heart transplant? 4 A. What's that? 5 Q. What does liver dysfunction do in terms 6 of a risk factor for a heart transplant? 7 A. We have an expert hepatologist. You 8 can -- you can direct these questions if you 9 want to get the -- the best answers to your 10 questions. 11 Q. That's fair, but I'm asking you. Do 12 you -- and if you don't know, that's fine. 13 A. We have -- 14 MR. BRANTINGHAM: Do you have the 15 question in mind? Do you -- we can have it read 16 back. 17 Q. Do you know what my question is? 18 A. Just to -- just to understand that you 19 are saying the right question -- I understand 20 the right question that you are asking. 21 Q. Yeah. So let me -- let me just ask it 22 a different way -- 23 A. Sure. 24 Q. -- so we make sure you and I are on the 25 same page.</p>	<p>1 foundation, particularly with respect to the 2 phrase "liver issues." 3 Q. Let's talk about one specific liver 4 issue. Do you know what cirrhosis is? 5 A. Yes, I do. 6 Q. What is cirrhosis? 7 A. It's an end-stage liver disease. 8 Q. What if anything does having a 9 cirrhotic liver do for your odds of being able 10 to have a successful heart transplant? 11 A. Can you repeat your question? 12 Q. What if anything does having a 13 cirrhotic liver do to your odds of having a 14 successful heart transplant? 15 MR. BRANTINGHAM: Foundation. 16 A. Can you repeat your question? I cannot 17 understand your question. 18 Q. Can't understand it? 19 A. Yes, I cannot. 20 Q. Okay. Is having a cirrhotic liver good 21 or bad for your odds of having a successful 22 heart transplant? 23 MR. BRANTINGHAM: Form and foundation. 24 A. If you want to put it on the negative 25 or positive, I will put it in the negative --</p>

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<p>1 Q. Yeah.</p> <p>2 A. -- column.</p> <p>3 Q. Not even in the gray area; right?</p> <p>4 A. Because you are saying something -- you</p> <p>5 know, you are saying liver cirrhosis.</p> <p>6 Q. Uh-huh. I am.</p> <p>7 A. But in the medical terms where -- when</p> <p>8 we are talking about that, you know, sometimes</p> <p>9 the liver gets improved after the heart</p> <p>10 transplant. So that's two different stories.</p> <p>11 So that's why your question is a little bit, you</p> <p>12 know, wide.</p> <p>13 Q. Do you agree that liver biopsy is</p> <p>14 usually required to rule out cirrhosis in</p> <p>15 patients who have liver disease and being</p> <p>16 considered for heart transplant because</p> <p>17 cirrhosis is a contraindication for isolated</p> <p>18 heart transplant?</p> <p>19 MR. BRANTINGHAM: Object to foundation.</p> <p>20 A. You can ask the select -- the --</p> <p>21 Q. I'm asking you because I'm reading it</p> <p>22 from an article that you're one of the authors</p> <p>23 on.</p> <p>24 A. Yes. I -- I'm an author on this --</p> <p>25 on this --</p>	<p>1 those words, doctor, that's --</p> <p>2 Q. It's a pretty -- pretty obvious</p> <p>3 concept.</p> <p>4 MR. BRANTINGHAM: -- that's the only</p> <p>5 question.</p> <p>6 A. Can I read the article?</p> <p>7 Q. No. You can answer my question.</p> <p>8 A. I -- I need to read the article to --</p> <p>9 MR. BRANTINGHAM: Doctor, if the answer</p> <p>10 is you don't remember --</p> <p>11 Q. Yeah.</p> <p>12 MR. BRANTINGHAM: -- the words as you</p> <p>13 sit here, that's fine.</p> <p>14 A. I can't remember. I can't remember the</p> <p>15 words.</p> <p>16 MR. BRANTINGHAM: There you go.</p> <p>17 Q. You can't remember.</p> <p>18 A. I have many articles, you know. I</p> <p>19 don't know.</p> <p>20 Q. That -- that's great.</p> <p>21 As a general statement, do you</p> <p>22 understand that having cirrhosis of the liver is</p> <p>23 a contraindication for heart transplant?</p> <p>24 A. It's one of the negative sides.</p> <p>25 Q. Right.</p>
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<p>1 Q. So why can't you just give me a</p> <p>2 straightforward answer to this question?</p> <p>3 A. Yes.</p> <p>4 Q. You're -- you're an author on this</p> <p>5 article; right?</p> <p>6 A. Yes.</p> <p>7 MR. BRANTINGHAM: Why don't you show</p> <p>8 him. Let him look at the article.</p> <p>9 Q. And the article is "Model for end-stage</p> <p>10 liver disease excluding international normalized</p> <p>11 ratio score predicts heart transplant outcomes."</p> <p>12 Do you remember this article?</p> <p>13 A. I remember this article, but I need to</p> <p>14 read it.</p> <p>15 Q. My question just was do you remember</p> <p>16 this article. Thank you. You've answered my</p> <p>17 question.</p> <p>18 Do you remember that one of the things</p> <p>19 that the authors, including you, said in this</p> <p>20 article is that having a cirrhotic liver is a</p> <p>21 contraindication for having an isolated heart</p> <p>22 transplant?</p> <p>23 A. Can I read this article?</p> <p>24 Q. I'm just asking if you remember that.</p> <p>25 MR. BRANTINGHAM: Just do you remember</p>	<p>1 MR. BRANTINGHAM: Okay. Can we pause</p> <p>2 here?</p> <p>3 MR. THOMPSON: Yeah.</p> <p>4 MR. BRANTINGHAM: We're now about an</p> <p>5 hour past the noticed time for your next</p> <p>6 witness.</p> <p>7 MR. THOMPSON: Uh-huh.</p> <p>8 MR. BRANTINGHAM: What's your plan?</p> <p>9 Like how are we going to do this?</p> <p>10 MR. THOMPSON: So --</p> <p>11 MR. BRANTINGHAM: Because I don't want</p> <p>12 medical personnel sitting here in the wings</p> <p>13 wasting time.</p> <p>14 MR. THOMPSON: Yeah. No, I appreciate</p> <p>15 that. I think I've probably got -- I mean some</p> <p>16 part of it depends on how I get answers to my</p> <p>17 questions.</p> <p>18 And we can go off the record.</p> <p>19 THE REPORTER: Okay. Off the record.</p> <p>20 (Discussion off the record.)</p> <p>21 THE VIDEOGRAPHER: We're on video.</p> <p>22 THE REPORTER: We're back on the</p> <p>23 record.</p> <p>24 BY MR. THOMPSON:</p> <p>25 Q. All right. So the donor's use of two</p>

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<p>1 to 30 beers per day for the last three years, 2 would that be in the plus column, the minus 3 column, the gray area? Where would that be? 4 A. Put it in the gray area. More towards 5 the, you know -- 6 Q. More towards the negative. 7 A. Yes. 8 Q. Yeah. 9 And then do you remember what the donor 10 had in his system in terms of drugs like at the 11 time that they did a tox screen in the hospital? 12 A. Definitely. I had -- I had a look 13 and -- and details about that donor, but I can't 14 recall exactly right now to answer you. 15 Q. All right. I assume that the fact that 16 he had methamphetamine, amphetamine, cannabis, 17 MDMA, and fentanyl all in his system on the tox 18 screen in the hospital, those would at the very 19 least be on the negative side of the gray area; 20 right? 21 A. I told you these are all in the 22 negative -- in the -- I'm sorry -- in the gray 23 area. 24 Q. What -- what if anything would you 25 consider to be something that would be actually</p>	<p>1 Q. Okay. Anything else? 2 A. That's one of them. 3 Q. I know that's one of them. Anything 4 else that you can think of as you sit here? 5 A. Function of the heart on the echo. 6 Q. Something other than ejection fraction? 7 A. I mean because the echo say it's a good 8 contracting heart -- 9 Q. Uh-huh. 10 A. -- in addition to the ejection 11 fraction. That's what I mean. 12 Q. Anything else -- 13 A. Yes. 14 Q. -- as you sit here today? And if you 15 can't think of anything else while you sit here 16 today, that's okay. 17 A. Like a -- aortic diameters. That's the 18 size that you were asking about -- 19 Q. Yep. 20 A. -- and I was telling you you are asking 21 about the size, these are the diameters, I mean. 22 Q. How much of a mismatch would there have 23 to be between the donor and the native aorta for 24 you to think that's a problem, that's going in 25 the negative column?</p>
<p style="text-align: center;">Page 187</p> <p>1 in the negative column, just not on the gray- 2 area-side negative column? 3 A. Yes. The negative -- the negative 4 part, you know, what I mean, all the factor 5 that -- the factors that you are mentioning, 6 they are not -- we don't deny organs, you know, 7 based on this, so -- 8 Q. Fair. That wasn't my question though. 9 Can you think of anything that if I 10 said "What about this?", you would say "Yep, 11 that's solidly in the negative column?" 12 A. There are multiple -- 13 You know, the whole circumstances of 14 the donor, you know, we take in consideration 15 and we say this is, you know, suitable to take 16 or not. 17 Q. No, I get that. But when I asked you 18 about a 65-percent ejection fraction, that 19 wasn't in the gray area. That was solidly in 20 the positive column; right? 21 A. That's correct. 22 Q. Okay. What if anything could I give 23 you as a risk factor that you would say, "Woo, 24 boy, that's solidly in the negative column?" 25 A. Probably low ejection fraction.</p>	<p style="text-align: center;">Page 189</p> <p>1 A. It's -- 2 I mean I can recall that was -- that 3 was, you know -- 4 I mean the aortic size, our aim is to 5 be less than four to four and a half. 6 Q. Four to four and a half what? 7 A. Centimeters diameter. 8 Q. Is the difference in size between the 9 recipient's aorta and the donor's aorta 10 relevant? 11 A. Of course. But -- but there was a 12 match in between these two. I mean the whole 13 measurements -- 14 I can recall, you know, the whole 15 assessment for this donor was matching this 16 recipient. 17 Q. I understand that. I'm not talking 18 about this donor. I'm talking about in general. 19 What -- 20 How much of a mismatch would there have 21 to be before you would be concerned enough to 22 put aortic size in the negative column? 23 A. Again, the whole circumstances of the 24 donor, the whole circumstances of the 25 recipients.</p>

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<p>1 Q. So you just can't --</p> <p>2 A. They are all together.</p> <p>3 Q. -- just can't give me an answer.</p> <p>4 A. All together.</p> <p>5 Q. All right. I assume that you were</p> <p>6 never any part of any informed-consent</p> <p>7 discussions with Mr. Leopold or his family.</p> <p>8 A. No, I was not.</p> <p>9 Q. You know, I presume, that there has</p> <p>10 been a suggestion made in this case that you and</p> <p>11 Dr. Knop were essentially sleeping for most of</p> <p>12 the flight back from Idaho. You know that;</p> <p>13 right?</p> <p>14 Is this the first time you're hearing</p> <p>15 about that?</p> <p>16 A. Who said that?</p> <p>17 Q. Danielle Fay and Michael Pick, the</p> <p>18 other two people who were on the airplane.</p> <p>19 A. No, I'm -- I'm not aware of this. No.</p> <p>20 Q. Okay. Is it true?</p> <p>21 A. We are in the airplane.</p> <p>22 Q. Huh?</p> <p>23 A. We are in the airplane, we are beside</p> <p>24 the heart, and we're having a specialist to</p> <p>25 manage the OCS machine for all the aspects. And</p>	<p>1 Q. Please.</p> <p>2 A. Yes. Because the OCS machine is big</p> <p>3 and we have another instrument, so what we go is</p> <p>4 two cars between the hospital --</p> <p>5 Q. Yeah.</p> <p>6 A. -- and to the airport, and from the</p> <p>7 airport to the hospital. So we do two cars, but</p> <p>8 the two cars are together.</p> <p>9 Q. Sure. So then the answer to my earlier</p> <p>10 question, which was you weren't actually there</p> <p>11 with the heart in the --</p> <p>12 Is it an ambulance? Does the heart go</p> <p>13 in the OCS in an ambulance from the hospital to</p> <p>14 the airport?</p> <p>15 A. No, it's an SUV most of the time, 95</p> <p>16 percent. Yes.</p> <p>17 Q. Perfect. All right. The SUV that</p> <p>18 actually had the heart, the heart that's beating</p> <p>19 that you're responsible for determining whether</p> <p>20 this is an appropriate heart, you weren't</p> <p>21 actually with the machine in the car from the</p> <p>22 hospital to the airport; right?</p> <p>23 MR. BRANTINGHAM: Object to the form of</p> <p>24 the question. Go ahead.</p> <p>25 A. I can't remember exactly, I mean, which</p>
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<p>1 he is the expert in that, and we are beside him,</p> <p>2 not away from him, and if he needs us, we are</p> <p>3 beside him to, you know, to help him in -- in</p> <p>4 every aspect.</p> <p>5 Q. Okay. I'm going to ask you some really</p> <p>6 straightforward questions here; --</p> <p>7 A. Go ahead.</p> <p>8 Q. -- okay?</p> <p>9 A. Go ahead.</p> <p>10 Q. Really straightforward questions.</p> <p>11 A. Go ahead.</p> <p>12 Q. Number one, were you with the heart</p> <p>13 when it went on the ground from the hospital in</p> <p>14 Idaho to the airport in Idaho?</p> <p>15 A. Yes.</p> <p>16 Q. So if there were text messages from</p> <p>17 Dan --</p> <p>18 You know who Danielle Fay is; right?</p> <p>19 A. Yes.</p> <p>20 Q. If there is a text message from</p> <p>21 Danielle Fay saying that you and Knop didn't</p> <p>22 ride with the heart on either ground commute, do</p> <p>23 you have any idea what she could be talking</p> <p>24 about?</p> <p>25 A. Can I explain that to you?</p>	<p>1 car I was in, --</p> <p>2 Q. Uh-huh.</p> <p>3 A. -- but I was with -- you know, in one</p> <p>4 of the cars that, you know, covering, but we</p> <p>5 have the specialist for the OCS machine that can</p> <p>6 run the OCS machine, and she can, you know,</p> <p>7 inform us, communicate with us easily and we are</p> <p>8 reachable to her at any time.</p> <p>9 Q. Okay. Again, I'm trying to ask really</p> <p>10 straightforward questions here so that we can</p> <p>11 get through the rest of this deposition. My</p> <p>12 question didn't have anything to do with</p> <p>13 anything other than whether you were in the car.</p> <p>14 I think your answer is "I don't remember for</p> <p>15 sure;" right?</p> <p>16 MR. BRANTINGHAM: Which car you were</p> <p>17 in.</p> <p>18 A. Which car I was in, but --</p> <p>19 Q. Okay.</p> <p>20 A. -- I was in one of the cars.</p> <p>21 Q. Perfect.</p> <p>22 If Danielle Fay says neither surgeon</p> <p>23 were in the car, I'm assuming you wouldn't have</p> <p>24 any reason to dispute her.</p> <p>25 A. If she said that, probably she -- she</p>

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<p>1 can remember, you know, that event.</p> <p>2 Q. Same question with respect to getting 3 from the Rochester airport to the hospital at 4 Mayo. If Danielle Fay says neither Dr. Knop nor 5 Dr. Altarabsheh were in the car, I assume you 6 won't dispute her.</p> <p>7 A. Sure.</p> <p>8 Q. Okay. Danielle Fay also says that you 9 and Dr. Knop were asleep for almost the entire 10 three-hour flight.</p> <p>11 MR. BRANTINGHAM: That's actually not 12 true.</p> <p>13 A. Can you read the message exactly what 14 she said?</p> <p>15 [REDACTED]</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 And I'm going to ask you all sorts of 22 questions about different parts of that text. 23 Right now I'm asking you just about the flight.</p> <p>24 If Danielle Fay says that you were 25 sleeping for most of that flight, are you going</p>	<p>1 A. Yes.</p> <p>2 Q. -- you have done, --</p> <p>3 A. Yes.</p> <p>4 Q. -- can you think of a -- can you think 5 of a time in those 30 or so runs that you've 6 slept on the plane?</p> <p>7 A. In all the runs I'm available beside 8 our tech to help in any event happened. And I'm 9 reach --</p> <p>10 Q. You know that's not my question.</p> <p>11 A. -- and I'm reachable -- 12 I'm sorry.</p> <p>13 Q. You know that's not my question.</p> <p>14 MR. BRANTINGHAM: Just your question is 15 do you ever sleep on the flight, it's really 16 that simple. That's the question.</p> <p>17 A. I may sleep sometimes.</p> <p>18 MR. BRANTINGHAM: There you go.</p> <p>19 A. Yeah.</p> <p>20 Q. And do you ever sleep for almost the 21 entire flight?</p> <p>22 A. I can't remember --</p> <p>23 You know, I do remember that I did not, 24 I mean, sleep the whole -- the whole air -- you 25 know, flight.</p>
<p>1 dispute that?</p> <p>2 A. I'm not aware of this conversation --</p> <p>3 Q. I don't --</p> <p>4 A. -- of these text messages.</p> <p>5 Q. Wasn't my question.</p> <p>6 A. I'm not a --</p> <p>7 Q. Listen very carefully to my question.</p> <p>8 A. Yeah.</p> <p>9 Q. If Danielle Fay says that you were 10 asleep for the almost-three-hour flight, are you 11 going to dispute that?</p> <p>12 A. I'm not aware of this conversation, and 13 from my side, my answer, I'm available for this 14 heart that -- in the airplane. We are very 15 close to the heart and to the specialist. We 16 have an excellent specialist that can manage the 17 heart in every aspect and we are very close. If 18 she needs us, we are beside her.</p> <p>19 Q. Is it a regular occurrence for you to 20 sleep on the plane during an OCS run?</p> <p>21 A. I can't recall. I mean --</p> <p>22 Q. Can you ever recall doing it?</p> <p>23 A. Say it again.</p> <p>24 Q. When I talked with you about your 25 estimates of the number of OCS runs --</p>	<p>1 Q. I don't --</p> <p>2 I didn't get that answer. I'm sorry.</p> <p>3 A. Yeah. The whole ent -- the whole 4 flight?</p> <p>5 Q. I'm asking: Can you think of a time 6 when you have slept for almost the entire flight 7 on one of these OCS runs?</p> <p>8 A. You say "almost" or "entire?"</p> <p>9 Q. Almost.</p> <p>10 A. I can't remember.</p> <p>11 Q. Do you think it's possible that it 12 happens?</p> <p>13 A. I'm available for the service that I'm 14 going for. I'm beside the heart and beside the 15 technician. If he needs me, I'm available.</p> <p>16 Q. But that wasn't my question and you 17 know it.</p> <p>18 My question is: Do you think there 19 probably have been times when you've slept for 20 almost the whole flight?</p> <p>21 A. I can't --</p> <p>22 MR. BRANTINGHAM: Best recollection as 23 you sit here, doctor. That's all you need.</p> <p>24 A. I can't remember.</p> <p>25 Q. Danielle Fay says that you and Dr. Knop</p>

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<p>1 literally asked for two or three of the lactates 2 during the whole trip. Are you going to 3 disagree with her on that?</p> <p>4 A. I can't remember exactly how many 5 lactates we -- we remember, but we usually are 6 alarmed if there is any deviation of the lactate 7 numbers by the technician that this is something 8 going not -- not in the right way. And in that 9 donor in particular, all the numbers were going 10 in the right way.</p> <p>11 Q. None of that was my question though. 12 My question had to do with you and Dr. Knop 13 asking for the actual lactate values.</p> <p>14 If Danielle Fay says that you asked for 15 two or three of the values for the entire trip, 16 are you going to disagree with her? Are you 17 going to dispute it?</p> <p>18 A. I can't recall exactly. 19 Q. Great.</p> <p>20 Did you tell Dr. Villavicencio that the 21 lactates were anything other than good?</p> <p>22 A. I can't remember, you know, the time of 23 communication, but I can attest that, you know, 24 the surgeon has -- has communication once we 25 arrive in Rochester in a way that this is the</p>	<p>1 MR. BRANTINGHAM: Object to the form of 2 the question.</p> <p>3 A. You can read the operative note. You 4 can ask Dr. Villavicencio about that, you know, 5 because there are many details in the operative 6 note.</p> <p>7 Q. I'm going to. But that wasn't my 8 question.</p> <p>9 A. Yes.</p> <p>10 Q. My question was: When did you find out 11 about it?</p> <p>12 A. Yeah. I mean after we came back, I 13 be -- just I was reading, as you are reading, 14 the operative notes and I found that there 15 was -- that was a problem.</p> <p>16 Q. Dr. Villavicencio didn't call you?</p> <p>17 A. No. I can't remember.</p> <p>18 Q. Okay.</p> <p>19 A. I can't recall that.</p> <p>20 Q. Okay. So you think the first time that 21 you heard about this heart that you brought back 22 from Idaho literally falling apart during the 23 surgery is when you read about it in the 24 operative report. You don't think Villavicencio 25 called you and asked you about it before you</p>
<p style="text-align: center;">Page 199</p> <p>1 heart, this is something. 2 Q. None of that was my question. 3 A. What's your question? 4 Q. Reading these -- reading these text 5 messages --</p> <p>6 A. Yes. 7 Q. And we're going to depose other people. 8 You're the first person we're deposing. We're 9 going to find out from other people.</p> <p>10 My impression from reading these text 11 messages is that after this disaster happened 12 with Noah Leopold's heart, Dr. Villavicencio, 13 understandably, was asking some questions to the 14 people who transported the heart, and the 15 impression I get is that either you or Dr. Knop 16 or both told Dr. Villavicencio that the 17 lactates were bad. Okay? Do you have any 18 recollection of doing anything remotely similar 19 to that?</p> <p>20 A. I -- I don't have any recall about 21 that.</p> <p>22 Q. Okay. When did you find out that the 23 heart, that you had brought from Idaho on this 24 OCS machine, basically fell apart in Dr. 25 Villavicencio's hands?</p>	<p style="text-align: center;">Page 201</p> <p>1 looked at the operative report? 2 A. I can't -- 3 MR. BRANTINGHAM: Hang on. Object to 4 the form and the foundation and it's compound. 5 Go ahead if you're able to answer that question.</p> <p>6 A. I can't recall those events. 7 Q. Do you --</p> <p>8 A. I mean the exact timing and sequence of 9 timing, I can't remember that.</p> <p>10 Q. Do you think that you found out about 11 it for the first time when you looked at the 12 operative report?</p> <p>13 A. The details that I know are from the 14 operative notes. But what I knew, I mean, is 15 that there was a problem with the heart, but I 16 didn't know the details unless I read that from 17 Dr. Villavicencio operative notes, the details.</p> <p>18 Q. A number of these text messages refer 19 to the heart as not being the most robust on the 20 machine or not being a happy heart during the 21 car rides. Is this the first you are hearing 22 about anything like that?</p> <p>23 A. I can't -- 24 MR. BRANTINGHAM: Hang on one second. 25 I'll object to the foundation and also the</p>

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<p style="text-align: center;">Page 202</p> <p>1 characterization -- 2 A. Can you read me? 3 MR. BRANTINGHAM: -- of the documents. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 hearing of this?</p>	<p style="text-align: center;">Page 204</p> <p>1 Q. You read the operative report, and so 2 you saw all the bad things that happened during 3 this attempted transplant; right? 4 A. I read the operative notes. 5 Q. And you told me before that you have 6 assisted on heart transplants before; right? 7 A. Right. 8 Q. Have you ever seen with your own eyes 9 anything happening like what Dr. Villavicencio 10 was noting in his operative note? 11 A. In the -- in the past, no. 12 Q. Okay. Have you ever heard of anything 13 like that happening? 14 A. No. 15 Q. So I presume that once you read the 16 operative report, it was pretty striking to you. 17 A. Strange. 18 Q. Yeah. Did you ever have any 19 conversations with Dr. Villavicencio, that you 20 can remember, about this catastrophe? 21 A. I can't recall exactly, you know, how 22 was the discussion about this. I can't recall, 23 you know. And myself as part -- 24 You know, I looked everywhere to see 25 any explanation, you know, and no one had any</p>
<p style="text-align: center;">Page 203</p> <p>1 A. This heart donor -- donor heart was -- 2 Q. Don't tell me about the heart donor. 3 A. -- was the best. 4 Q. Just answer my questions. 5 MR. BRANTINGHAM: Here's -- let's -- 6 Here's an easy question. Have you ever 7 seen these text messages that he's reading to 8 you? 9 THE WITNESS: No. 10 MR. BRANTINGHAM: Okay. So that helps 11 set some foundation here. 12 MR. THOMPSON: Yep. 13 Q. Also though -- 14 MR. BRANTINGHAM: Go ahead. 15 Q. -- I assume that you had some 16 conversations about this whole catastrophe after 17 it happened. Set aside talking to Mr. 18 Brantingham or people from Mayo Legal. 19 A. Like say it again. I mean -- 20 MR. BRANTINGHAM: Hold on, just -- 21 doctor, hold on. 22 Q. Let me put it a different way. 23 MR. BRANTINGHAM: Ask it -- just ask a 24 question. 25 MR. THOMPSON: Yeah.</p>	<p style="text-align: center;">Page 205</p> <p>1 explanation, even in the literature. We went 2 ask everyone, no one knows. 3 Q. You went and asked everyone. Who did 4 you ask? 5 A. My colleagues. 6 Q. I would like a list of all the people 7 that you went and asked -- 8 A. I can't -- 9 Q. -- to try to get an explanation for 10 what happened here. 11 A. I can't remember, but the first of them 12 is Dr. Gustavo Knop. 13 Q. Okay. 14 A. That's one of them. 15 Q. Okay. Give me a list of every other 16 person you can think of that you talked to. 17 Because you said you talked to everyone, so I 18 assume it's a pretty long list. 19 A. I talked to people, you know, just -- 20 Gustavo Knop is -- is one of them. 21 Q. Great. I want to know the others. 22 A. I can't remember, you know. 23 Q. Give me one more. 24 MR. BRANTINGHAM: Or just give him your 25 memory. Okay? You don't have to give him one</p>

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<p>1 more just because he wants it. If you can 2 remember other people you talked to -- 3 A. I can't remember. 4 Q. Not a single other person. 5 A. I can't remember exactly, you know, on 6 this particular one that I asked him about this. 7 Q. Do you recall, at least in general 8 terms, having a conversation with Dr. 9 Villavicencio about this, even though you can't 10 remember all the details? 11 A. I can't remember. 12 Q. You don't remember even like whether 13 there was a conversation? 14 A. I can't recall that event, I mean in 15 particular, the conversation. 16 Q. Did you -- 17 A. Yes. 18 Q. -- notice at any point in time during 19 this OCS run that the heart was not the most 20 robust on the machine? 21 A. The heart from my, you know, from my 22 perspective was the best donor to take. 23 Q. But that wasn't remotely close to my 24 question. My question was: In all the time 25 that you were with this heart --</p>	<p>1 into the room? 2 A. I can't remember. 3 MR. BRANTINGHAM: He doesn't remember. 4 A. I can't remember. 5 Q. You just can't remember one way or 6 another. 7 A. Yes. Exactly. 8 MR. THOMPSON: All right. Let's take a 9 short break. I think we are darn near close to 10 done here. 11 THE REPORTER: Off the record. 12 (Recess taken from 12:18 p.m. to 12:24 13 p.m.) 14 THE VIDEOGRAPHER: We're on video. 15 THE REPORTER: We're on the record. 16 BY MR. THOMPSON: 17 Q. When you bring the heart into the 18 operating room -- and I know you don't remember 19 for sure what happened in this case -- but in 20 general, do you do any sort of hand-off 21 communication with the transplanting surgeon? 22 A. Yes. 23 Q. What is usually involved in that hand- 24 off communication? 25 A. We usually tell the surgeon about any</p>
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<p>1 A. I didn't -- 2 Q. Hold on. 3 MR. BRANTINGHAM: Just let him ask the 4 question, doctor. Yeah. 5 Q. Answer my question. 6 A. Sure. 7 Q. In all the time that you were with this 8 heart in a clear box visually inspecting it as 9 you were supposed to do, did you ever notice 10 that it was not the most robust heart while it 11 was on the machine? 12 A. I did not notice that. 13 Q. And presumably, even though you say 14 that you were available for them, neither Mr. 15 Pick nor Ms. Fay, to your recollection, ever 16 told you, "Hey doctor, this is like not looking 17 that good." 18 A. I can't recall this. 19 Q. Did you bring this heart into the 20 operating room? 21 A. Yes. 22 Q. It was a long time ago so I don't 23 remember if I got an answer to this question or 24 not. Do you remember whether Mr. Leopold's 25 heart was explanted when you brought this heart</p>	<p>1 event, you know, happened with us during -- you 2 know, again explaining more details if there is 3 any event happened, you know, -- 4 Q. Okay. 5 A. -- and that's it. 6 Q. If you had noticed that the heart was 7 not looking robust in the way that's described 8 in these text messages, presumably that would be 9 something that you would have passed along to 10 Dr. Villavicencio? 11 MR. BRANTINGHAM: Just object to the 12 form of the question and the foundation. 13 A. Can you -- can you repeat the question 14 or explain it more? 15 Q. Yeah. So visual inspection of the way 16 the heart just looks as it's functioning is an 17 important part of the assessment. 18 A. Right. 19 Q. And so would I be correct in assuming 20 that if there was a change in the way the heart 21 was appearing, you'd pass that along to the 22 transplant surgeon? 23 A. Of course. 24 Q. Okay. Does the transplant surgeon 25 usually ask about the lactates during that</p>

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